

***United States Court of Appeals
for the Second Circuit***



APPENDIX

74-1550

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IN THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

NO. 74-1550

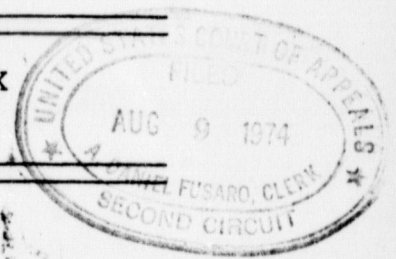
THE UNITED STATES OF AMERICA,
Plaintiff-Appellee,

-against-

CARMINE TRAMUNTI, et al.,
Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

253 DEFENDANTS-APPELLANTS' JOINT APPENDIX
Vol. T(33) - Pages 4475 to 4649



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2 UNITED STATES OF AMERICA
3 vs.
4 CARMINE TRAMUNTI, et al.

73 Cr. 1099

5 New York, March 4, 1974;
6 10.00 A.M

7 Trial resumed.
8 - -

9 (In open court; in the absence of the jury.)

10 THE COURT: Gentlemen, let me start off today
11 with taking care of the matters which came up on Monday
12 last.

13 Mr. Curley, I see, is not here.

14 MR. RICHMAN: Mr. Curley, your Honor, was called
15 before Judge Gurfein just a moment ago and I would cover
16 for him for the time being.

17 THE COURT: Is his client here?

18 MR. RICHMAN: Yes, your Honor. Mr. Marchese is
19 seated behind me.

20 THE COURT: Come up here.

21 Mr. Marchese, I am greatly troubled with the
22 decision which I have to make now. Intuitively I believe
23 that you may have been guilty of the crimes with which you
24 were charged. But, as a judge working under the law, I
25 cannot let your case go to the jury. Under the circum-

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2 stances, I am directing the clerk to enter a verdict of
3 acquittal, but I am telling you right now if you get in
4 trouble again that case is going to be a related case to
5 this one and you are going to appear before me.

6 Do you understand that?

7 You are a very, very lucky guy, and I would
8 suggest that you do not try my patience or the patience of
9 any other judge. Do you understand that?

10 Unfortunately, Mr. Curley is not here. I say
11 unfortunately because while I recognize that you have been
12 represented by the Legal Aid Society, I am telling you right
13 now that you got absolutely sterling representation and
14 you had better, not for me but for yourself, thank that man
15 for the job he did for you. Do you understand?

16 DEFENDANT MARCHESE: Yes, sir.

17 THE COURT: All right.

18 MR. RICHMAN: Thank you, your Honor.

19 THE COURT: Is there a question of bail or any-
20 thing like that?

21 MR. RICHMAN: I believe there is, your Honor,
22 I respectfully move that the bail be exonerated.

23 THE COURT: All right, it will be.

24 All right. You may leave.

25 DEFENDANT MARCHESE: Thank you, your Honor.

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2 THE COURT: Before you leave, though, find Mr.
3 Curley and thank him.

4 MR. RICHMAN: I will instruct him, your Honor,
5 to wait for Mr. Curley. He will return shortly.

6 DEFENDANT MARCHESE: I intend to.

7 THE COURT: In connection with the request to
8 charge, let me phrase it this way:

9 I have decided at this time to deny all of the
10 requests to charge in connection with the defendants'
11 contentions. Unfortunately, some of them have come out
12 and what you are asking for is not me to charge the jury
13 as to a defendant's contention, but me to sum up for you.
14 There was a time when I used to sum up for people, but I
15 gave that up now.

16 You will hear, however, the defendants' con-
17 tentions come out in the charge, but I will not sum up.

18 MR. ELLIS: May I have an exception, your Honor?

19 THE COURT: Of course.

20 MR. ELLIS: Thank you.

21 THE COURT: Wait a second. Don't go away.
22 You also all have exception to the summary that I am going
23 to give as to the evidence.

24 We will start off with your requested modifica-
25 tions of my proposed charge made by Mr. Siegal in con-

nection with Carmine Tramunti.

Mr. Siegal, the first request that you have basically can cause a great deal of difficulty for other defendants. You are requesting me to charge the jury that a stipulation is not necessarily to be accepted as proof.

What I have done is divided up those stipulations which are stipulated to be true are true and you are to accept it that way, those stipulations that are supposed to be the testimony of witnesses are to be judged as the testimony of witnesses.

In substance, I will be giving your second request to charge, your third request to charge.

On your fourth objection or exception, whatever you want to call it, you object to my making reference to the reason for the enactment of the present drug laws. That will be deleted from the charge.

On your fifth objection, that particular thing will not be given in the words that you have it. It will be given generally, however.

On the sixth, basically that is going to come at the end or towards the end of the charge as part of the defendants' contentions.

Your seventh is basically given in substance.

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2 Mr. Warner, you requested a charge as to the
3 reliability of accomplice testimony. That is given in
4 substance.

5 Mr. Ellis, you objected to my proposed charge
6 in that you wanted the accomplices to be made accomplices
7 of some defendants. That is granted.

8 Your second request is that I knock out,
9 basically, the reason for the narcotic rules. That is
10 granted.

11 You requested on your third objection that I
12 change knowingly associated to knowingly joined. I have
13 done that at least once. I am not sure that it is done
14 throughout, but it is clear that there must be -- I hope
15 it is clear in the charge -- there must be a joinder with
16 knowledge.

17 Your fourth objection as to actions speak louder
18 than words is denied.

19 As to your requests which I believe, unless I am
20 wrong, you filed on the same day that I dictated the first
21 part of the charge to you and, as such, there may be some-
22 thing that I don't know if you want them, anyway, Request
23 No. 1, basically, will be given.

24 Request No. 2, basically, will be given, except
25 that I might be stronger than you are.

Request No. 3 will be given, not in those words, though.

Request No. 4, again, not in those words, but basically it will be given.

Request No. 5, which deals with knowledge of the conspiracy, as I have indicated, I am going to charge on that. It will not be in those words, not because I don't like your words, but because I feel more at home with my own.

Request No. 7, the Kotteakos charge, will be given and I am going to make it clear to the jury that if they find multiple conspiracies, then they are going to have to acquit, but it is not going to be given in your words.

Request No. 8 basically will be given.

Request No. 9, basically a request that the evidence be separately considered as to individuals and as to the elements, that is going to be given, but not in your words.

Request No. 10, the burden of proof, it is going to be given, not in your words, a little bit stronger than that.

Request No. 11 is basically a defendant's contention and since I am denying all defendants' contentions, I deny that one, too.

Request No. 12 I believe will be given, but not in those words.

Request No. 13, that is about a defendant having a right not to say anything, Mr. Fisher came up with a suggestion as to the -- hold on.

Mr. Curley, would you pack our bag and leave.

MR. CURLEY: Thank you.

THE COURT: Mr. Fisher came up with a request in this area which I included in the proposed charge. I think that that is more favorable than the one you have requested.

Request No. 14, basically, will be given.

Request No. 15, I believe on that I prefer my own language and I am going to stick with it.

Request No. 16 basically will be given.

MR. ELLIS: Your Honor, I may have missed it. Did you rule on my Request No. 6, single transaction?

THE COURT: I believe I did.

Yes. It is denied.

Mr. Fisher and Mrs. Rosner, on your exceptions to the proposed charge, your first one, basically, will be cured. That is the accomplice testimony one.

Your exception to my handling of the reasonable doubt section remains an exception.

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2 Your third exception as to the background of the
3 legislation, since I have indicated I have already dropped
4 that from the charge, I guess you can consider that as
5 granted.

6 Exception No. 4 I believe to be covered in the
7 charge. It will not be done the way --

8 MR. FISHER: I am sorry, I didn't hear you.
9 It will not be --

10 THE COURT: It will not be done in the way you
11 requested for it in those words.

12 Request No. 5 where you request the words "coupled
13 with" when you have association and knowledge and intent and
14 so on and so forth, I will put that in.

15 Request No. 6 or objection No. 6, I don't know
16 what you want to call it, is denied generally. All
17 right?

18 MR. FISHER: Yes.
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25

1 THE COURT: You also filed requested addi-
2 tions. One is part of Judge Mishler's charge in Vega
3 as to proof beyond a reasonable doubt. I would prefer
4 to charge it in my own language.
5

6 You know, for a Duffy to charge about Scottish
7 law is a bad scene. We are all Gaelic, but not that
8 close.

9 Again, you requested a joinder in the con-
10 spiracy charge which in substance I am giving.

11 The unanimous verdict one, I will give it, but
12 I will give it in my words rather than yours.

13 MR. Herbert Siegal, as to your supplemental re-
14 quests, request No. 1, basically, as I see it, is a conten-
15 tion, and since I am denying everyone's contentions, that
16 one is denied too.

17 Of course, No. 2 is the multiple conspiracies.
18 I prefer to do it in my own language.

19 Request No. 3 as to the SpOak conspiracies
20 is denied.

21 Mr. Richman, by letter of February 22nd you
22 reauested certain modifications to the charge. Of course,
23 those modifications, requested modifications, came in too
24 late, but I will rule on them anyway.

25 Your first one is definitely not going to

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2 be charged in the words that you requested them.

3 Of course, No. 2, in substance will be charged,
4 but I am not going to do it in your language, because I
5 feel more comfortable with my own.

6 Request No. 3 will be charged, again in substance
7 with my words.

8 Request No. 4, generally I am denying it, but
9 I don't think you will be too disappointed the way I handle
10 it. It is denied and you have an exception for that.

11 I don't think I have to rule on the government's
12 request to charge, but if you want a ruling, most of them
13 have been altered drastically again because I feel
14 more comfortable with my own words.

15 Does anybody else have any requests to
16 charge that I have not touched on? Somebody, I under-
17 stand, came up with one today. Those, basically, from
18 glancing at the defense contentions, are all denied.

19 MR. PANZER: I don't know if your Honor is
20 going to charge on character testimony, but I did make a
21 request to your clerk.

22 THE COURT: Absolutely, yes.

23 Basically what you want to know is am I going
24 to charge that character testimony in and of itself can
25 be the basis for a reasonable doubt. Is that what you

want to hear?

MR. PANZER: Yes, your Honor.

THE COURT: You will hear it.

MR. DOWD: Your Honor, did you rule on my requests to charge?

THE COURT: No, come to think of it, I went past them because I was waiting for you to get here.

MR. DOWD: Thank you, Judge.

MR. KING: I don't think your Honor commented on my requests.

THE COURT: No. I will tell you why because basically I find them to be defense contentions. I am not going to charge them in your words, but I am going to charge defense contentions, so you should consider that your requests are denied and you should also consider and everybody else should consider that you have an exception to that denial.

MR. KING: Does that include the supplemental I handed up this morning? Did your Honor have a chance to look at those?

THE COURT: I will take a look at them.

MR. KING: I wish you would. I was up quite late in typing them myself. You will recognize my inexperience.

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2 THE COURT: In typewriting?

3 Let me take a look at them.

4 (Pause.)

5 THE COURT: Your request No. 1, which basically
6 deals with the testimony of Harry Pannirello, will be alluded
7 to in the charge, but not the way you requested it. You
8 have an exception, of course.

9 Your requests No. 2 and 3, both of them are
10 denied.

11 Request No. 4 will be given, but in slightly
12 different language. In substance it is granted, how-
13 ever.

14 Does anybody else have any extra requests?

15 MR. EPSTEIN: Excuse me, your Honor. The
16 defendant Tramunti submitted additional requests to
17 charge which the court has not commented on this morning.

18 THE COURT: Let me have them. I will com-
19 ment on them.

20 (Handed to court.)

21 THE COURT: This I did comment on. This
22 is what I started off with I am quite sure.

23 MR. EPSTEIN: No, sir. You started off
24 with our contentions concerning your proposed charge.

25 THE COURT: Request No. 1, basically, will

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2 be given, but when I say basically I don't mean in those
3 words.

4 Proof of participation in a conspiracy, which
5 is request No. 2, it is going to be given, but not in
6 these words.

7 Request No. 3, which is membership in a conspiracy,
8 I am not going to give it in these words, but I am going
9 to hopefully bring home to the jury that it has to be
10 a joining of the conspiracy, it has to be intentional, it
11 has got to be all the rest of the things that are necessary
12 to get in there. The particular words that are being
13 used here I am not going to use. I feel more at home
14 with my own and I am going to stay with them.

15 Request No. 4, which is the knowing spectator
16 request, I am not going to give it in your language, but
17 it is going to be covered and then some.

18 Request No. 5 I think you can consider that one
19 denied.

20 Request No. 6, you can also consider that one
21 denied.

22 Request No. 7 basically goes to an area
23 which I consider are defendants' contentions and, as such,
24 you should consider it denied, but don't be surprised
25 if you hear it.

MR. EPSTEIN: I respectfully except. Thank you, your Honor.

THE COURT: Mr. King, as to Mr. Gamba's request No. 9, it is denied.

Request No. 10 is granted basically in those very same words.

Request No. 11 I can't give in those particular words because I have to give it for each and every defendant and you have it tied into one and I am basically going to grant it. In other words, what I am talking about or what I will be talking about is the necessity of knowingly and knowledge. I think that covers 11 and 12.

13 is denied.

Have I missed anything?

Yes, Mrs. Rosner?

MRS. ROSNER: In light of your granting Mr. Curley's application for a judgment of acquittal for defendant Marchese --

THE COURT: That shocked you, didn't it?

MRS. ROSNER: Yes, as a matter of fact. That is the only thing that woke me up this morning.

I would ask your Honor to preclude the government from in summation urging the truthfulness of their

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2 contentions at trial that Mr. Inglese's relationship with
3 Mr. Marchese involved transactions in narcotics. I think
4 in light of your Honor's granting the judgments of acquittal
5 they will be collaterally estopped from urging that por-
6 tion of Stasi's testimony upon the jury in support of a
7 theory of guilt.

8 THE COURT: All right.

9 Gentlemen, Mr. Fisher?

10 MR. FISHER: Your Honor, has the govern-
11 ment submitted contentions? If so, how --

12 THE COURT: You mean to say things that
13 you haven't had?

14 MR. FISHER: No. The defendants submitted
15 defense contentions. I wonder -- they did?

16 THE COURT: Did the government?

17 MR. FISHER: Did the government submit any
18 requests?

19 THE COURT: They are denied too.

20 MR. FISHER: All right. May I have a copy
21 of those, your Honor?

22 THE COURT: Sure, if they have any. I
23 haven't seen any.

24 MR. FISHER: Has the government submitted
25 them to your Honor?

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2 THE COURT: I am quite sure if they have,
3 they have given them to you.

4 MR. FISHER: No, your Honor. We agreed
5 that --

6 THE COURT: I understand that. I understood
7 your agreement and I went along with it, but I think that
8 they did not give me anything that they have not given you.

9 Is that correct?

10 MR. CURRAN: That is correct, your Honor.

11 THE COURT: All right.

12 MR. RICHMAN: Your Honor, is my understanding
13 that the motions made before you on Friday are summarily
14 denied? Is that correct?

15 THE COURT: That is correct, except for Mr.
16 Curley's motion.

17 MR. RICHMAN: In reference to the infer-
18 ence that may be drawn from the cocaine in Tolopka's
19 case, are you going to instruct the jury that they
20 may draw such an inference that it was imported?

21 THE COURT: Am I going to instruct the jury
22 that they may draw an inference that it was illegally
23 imported?

24 MR. RICHMAN: Yes.

25 THE COURT: Yes, I am.

MR. RICHMAN: Thank you, sir.

THE COURT: You have an exception to that, Mr. Richman.

MR. DOWD: Your Honor, I just have one further request, that the jury be charged as of November 14, 1972 John Barnaba ceased to be a participant in the conspiracy, if they find a conspiracy, when he was arrested.

THE COURT: Yes, I understand, but that is part of the evidentiary stuff and basically my problem is if I go through the evidence in great detail I am going to sound like I am summing up.

MR. DOWD: I agree with you. I rather you don't go through it at all.

THE COURT: Believe it or not, that is the last thing I want to do in this case. You know, I want to do it fair and square. Under the circumstances I am going to deny that request.

Yes, Mr. King?

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2 MR. KING: Judge, at the close of Friday's
3 session, when you were making the rounds as to who would
4 argue and who wouldn't, when you came to me I said
5 "Pass," and I see it's been transcribed as "Yes."

6 Just so that your Honor isn't confused, I
7 still pass.

8 THE COURT: All right. You still play bridge
9 on the train, I bet, too.

10 MR. KING: I am sorry?

11 THE COURT: You say you still play bridge on
12 the commuter train too.

13 MR. PHILLIPS: Your Honor, with respect to
14 government's request to charge I believe it is No. 22, we
15 have the figures that we would like the court to take
16 judicial notice of regarding thefts of cocaine during the
17 year in question.

18 THE COURT: No, no. It better be the
19 years 1969 and 1970, both.

20 MR. PHILLIPS: Yes.

21 THE COURT: By the way, where is Mr. Rosenberg?

22 MR. LOPEZ: Mr. Richman I believe is covering
23 for Mr. Rosenberg this morning.

24 MR. RICHMAN: I will be covering for him.

25 MR. LOPEZ: Hopefully the court consents.

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2 MR. RICHMAN: I believe, your Honor, in 1969,
3 according to the Gonzalez case, it said 6.8.

4 MR. PHILLIPS: In any case, we have the
5 figures for 1970 and we will give your Honor the
6 figures for 1969 before the charge so your Honor can
7 take judicial notice.

8 THE COURT: All right.

9 MR. RICHMAN: Will you give a copy of those
10 figures to me.

11 THE COURT: Absolutely.

12 MR. ELLIS: Your Honor, I have an application
13 to preclude the government from arguing the alleged
14 DiNapoli-Mamone partnership, which I don't believe you
15 have ruled on yet.

16 THE COURT: Yes, I know. Honestly, Mr.
17 Ellis, I haven't ruled on it because I haven't focused on
18 it.

19 Contrary to the beliefs of some people that
20 judges have a soft life, I spent this entire weekend
21 working on the charge save for a couple of hours going
22 out to a lunch. That was about it. Also an hour
23 for church yesterday. But that is the extent of
24 it.

25 I will rule on that before they ever get to

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2 it and I will do it between now and, say, 10 o'clock to-
3 morrow morning.

4 MR. ELLIS: Thank you.

5 THE COURT: Does anybody else have anything
6 else open?

7 MR. SIEGAL: Yes. There was a motion to
8 strike overt acts 2, 15, 16 and 17.

9 THE COURT: The motion is denied.

10 As to all of my rulings, as to the charge and,
11 in fact, all of the rules this morning, you all have
12 an exception. You don't need to put into the record.
13 You got it.

14 MR. FISHER: Your Honor, there is a motion
15 that should have been made at the time the Rule 29 motions
16 were made and I would like to make it now so the record
17 is protected, to strike all of the hearsay testimony
18 adduced during the course of the trial in which Mr.
19 Christiano was not a participant and/or a witness
20 and present on the grounds that the government has
21 failed to meet its burden with regard to a prima facie show-
22 ing of conspiracy.

23 THE COURT: All right. I had considered
24 that one of the motions that had been made. It is
25 denied. It is a motion that everybody has joined in.

MR. WARNER: If there is nothing more on the charge, there is a question about the indictment that is going to be submitted to the jury.

THE COURT: Mr. Engel, who is in charge of the Quartermaster Corps here, is going to cut it up and get it nice and clean, and after it is cleaned up I will take a look at it and you can look at it too.

MR. WARNER: Your Honor, am I correct in understanding that as the indictment is written, which contains certain nicknames next to certain names, that it will be submitted to the jury in that form.

THE COURT: With the nicknames?

MR. WARNER: With the nicknames.

THE COURT: I am glad to see that you have learned to use the word "nickname" instead of alias.

It will be submitted with the a/k/a included. In this particular case, although generally I am against it. In this particular case most of the defendants are referred to by nickname.

In view of the fact that I had nothing else to do on Friday night I went down to see the jury. Needless to say, you can guess I had something else to do. But I went down anyway.

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2 You will notice that Mrs. Gloria Jones, who is
3 Juror No. 12, has been excused. The reasons for it
4 are serious, but are totally unnecessary to be put on the
5 record here. If you want to know I will put it on the
6 record inside in the robing room and then I will seal it.

7 MR. FISHER: If your Honor please, I
8 would make that request.

9 THE COURT: All right. Come in and
10 I will tell you the reason why. I will tell you
11 that I was being extremely reasonable.

12 Does anybody else want to come in on that.

13 MR. FISHER: Your Honor, I want the record
14 to reflect that we object.

15 THE COURT: Of course, sure.

16 MRS. ROSNER: Your Honor, in line with
17 Mr. Siegal's motion, I would move to strike overt act No.
18 1 from the indictment. That is the one which charges
19 that in November, '69 Louis Inglese transported a clear
20 plastic bag to Diane's Bar. There is no evidence in
21 this record to support that, your Honor. I move to
22 strike that.

23 THE COURT: All right.

24 MRS. ROSNER: I would also move to strike
25 No. 10, which is the overt act dealing with the Marchese

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2 transaction.

3 Since there has now been a judgment of acquittal
4 on that count, your Honor, I think the government would
5 be precluded from relying on overt act No. 10 to support
6 the conspiracy count. Specifically, it says in May or
7 June, '71 Joseph Marchese received a half kilogram of
8 heroin from the defendant Louis Inglese at the Beach Rose
9 Social Club. I think certainly, your Honor, in light
10 of the judgment of acquittal the government cannot rely
11 on that as an overt act.

12 THE COURT: I am not sure about that.
13 Consider your motion denied.

14 MRS. ROSNER: The same ruling as to No. 1,
15 your Honor.

16 THE COURT: Yes. I believe as of this
17 time we are finished with all the motions, all the re-
18 quests, all the applications.

19 Let me tell you something. Unfortunately,
20 I have sat through trials both as a prosecutor and as a
21 defense counsel and I have become terribly upset when
22 one of my co-counsel became emotional. I believe that
23 you can be emotional and do it low key and bring the jury
24 to your way of thinking. But I told you on Friday,
25 and I am going to tell you again, you have to stay

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within the facts of this case. I don't particularly
care to hear about Watergate or the Gulag Archipelago,
however you pronounce that thing, or anything else.
I want to hear about this case.

I am warning you right now, if you wander away
unfortunately I am going to have to land on you. I
don't want to do that. The last thing that you should
want is to get me to express some kind of a ruling in
front of the jury during your summation. I am warning
you now, don't wander, stay with the facts, argue those
like they won't quit, but stay with these facts.

If you wander, if you wander, I am telling
you now I will land on you, and I will not wait for
an objection, I will not wait for a motion, I won't
wait for anything. All right?

Argue, argue well, but argue fairly.

Those people who are interested in finding out
why Juror No. 12 was excused can come inside.

hpl

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(In the robing room.)

THE COURT: Apparently Juror No. 12 had five children, all under 10 years old, 10, 9, 8, 7 and 5. I had no knowledge of this whatsoever.

The kids, when she became sequestered, decided that they would have it their way. So they played hookey, and they have been playing hookey since word go.

Anyway, on Friday night the New York City Welfare Department showed up to take the kids away and put them in an orphanage and my choice was to excuse her and let her go home to her five kids or let the five kids go to an orphanage.

MR. KING: Did she have nobody home taking care of them?

THE COURT: No. That is the problem. She asked one of her neighbors to take care of them and they didn't.

Off the record.

(Discussion off the record.)

1 hp2

2 MR. FISHER: If your Honor please, on behalf of
3 all of the defendants, we would respectfully move for a
4 mistrial at this point as a result of what happened with
5 Juror No. 12.

6 We don't place the onus really on the Court as
7 much as we do on the fact that when this juror was asked
8 by the Court if there was any reason why she couldn't sit
9 for this length of time, if there ever were one, that was
10 it.

11 I know that in the course of our consultations
12 with regard to picking a jury we had no idea that that was
13 the case and she looked like a juror we would have to argue
14 to and when we were employing our peremptory challenges we
15 did that under the assumption that she would be one of the
16 jurors and we felt differently with regard to No. 13,
17 hoping that the 12 we got would stay.

18 So we move for a mistrial at this time. All of
19 the defendants join in it.

20 THE COURT: All right. The motion is denied.

21 (In open court.)

22 THE COURT: Mr. Pollak, I gather you are first up.

23 MR. POLLAK: Yes, sir.

24 THE COURT: How long do you expect to be?

25 MR. POLLAK: Say between 30 and 45 minutes.

1 hp3

2 THE COURT: Who follows you?

3 MR. POLLAK: I think Mr. Siegel, your Honor.

4 THE COURT: How long do you figure on being?

5 MR. SIEGEL: Your Honor, I should hope not more
6 than 45 minutes.

7 THE COURT: All right. Mr. Clerk, bring in the
8 jury.

9 (Jury present.)

10 THE COURT: Ladies and gentlemen, I assume you
11 all know that Mrs. Jones, who was Juror No. 12, requested
12 to be excused and I did release her.

13 Under the circumstances, Mr. Davis, you are now
14 Juror No. 12. It matters very little to me, but it might
15 matter to the counsel, so I would suggest that you change
16 your place.

17 Ladies and gentlemen, we have arrived at a point
18 in the trial which is most important. You are about to
19 hear the summations of counsel.

20 I have told you, and I will tell you again,
21 that what counsel says is not evidence. But believe me,
22 it's important. It's very important. With the realiza-
23 tion of its importance, please listen to counsel, listen
24 to their argument.

25 Mr. Pollak.

1 hp4
2 MR. POLLAK: May it please the Court, fellow
3 counsel, ladies and gentlemen:

4 This is the first time that I have had an
5 opportunity during the course of this long trial to talk
6 to you ladies and gentlemen and it also will be the last
7 time. If you recall, when the trial started the opening
8 for my client, Henry Salley, who has been sitting here
9 throughout the trial, the opening was handled by his then
10 attorney, Mr. Murray Segal, and I think you are aware of the
11 tragic circumstance that took Mr. Segal from our midst and
12 resulted in the fact that I came in to represent Mr.
13 Salley and have been doing so for the most of the trial.

14 Now, as his Honor has indicated, summations are
15 not evidence. They are merely conclusions that we lawyers
16 have been able to draw based upon the evidence that came
17 in on the witness stand and through the exhibits. We
18 have been sitting here listening to the same evidence and
19 looking at the same exhibits that you have and its helpful
20 in a sense if we tell you how we would tie it up and the
21 conclusions that we would draw and in a sense perhaps
22 persuade you. That is the function of summation.

23 When defense counsel sits down the prosecution
24 gets a chance to get up and then, of course, we can't
25 answer any more what they say. So in a sense defense

1 hp5

2 counsel has the burden at this point of anticipating what
3 the prosecution is going to say about the case and trying
4 to answer some of these things before the government
5 actually makes the statements. You are going to hear
6 from the prosecution after the defense counsel have
7 talked to you.

8 Now, my client, Henry Salley, is the last named
9 person in the indictment that is going to be submitted
10 to you. That is why my summation is first. But I hope
11 and trust -- and I know you have been paying very good
12 attention to the evidence here -- I hope and trust that
13 he is not going to be lost in the shuffle here because
14 he is here to seek justice at your hands the same as the
15 other defendants, and I know that you will give it to him
16 and consider him as an individual and not as part and
17 parcel of a large number of defendants whose cases you
18 are to consider during your deliberations.

19 Now, my client, Henry Salley, is charged only
20 under the 1st count of the indictment. That charges that
21 he and the other defendants engaged in a conspiracy.
22 He is not charged with any of the substantive counts.
23 The indictment has many counts, as you have been told, and
24 will be told again, and some of the defendants are charged
25 with the so-called substantive counts, but not Henry

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2 Salley. The only charge the government makes is that
3 Henry Salley was part of this conspiracy based upon what
4 they say they are going to prove about him.

3A 5 Now, I am not going to dwell too much on the
6 question of whether or not there was a conspiracy or
7 perhaps several conspiracies here. I think some of the
8 other counsel are going to deal with that at some length.
9 But I will just briefly tell you to anticipate what you
10 are going to be told about a conspiracy.

11 Conspiracy is defined, and I think you will
12 hear the Court define it, as a partnership in crime.
13 In order to become part of the partnership, it is
14 necessary for an individual defendant to knowingly
15 participate in the conspiracy with knowledge of the purpose
16 of the conspiracy.

17 Now, the government, in the indictment, charges
18 Henry Salley with only one overt act, only one active thing
19 that they claim he did, and the prosecution tells us in
20 October, 1972, he went with another defendant, Warren
21 Robinson, to New Jersey.

22 Now, let's talk about what evidence there has
23 been that Henry Salley committed this overt act at all
24 and what is the evidence against Henry Salley.

25 Well, you have heard a whole parade of witnesses

1 tp2
2 here, and only two of them -- I will take that back.
3 There were three of them that mentioned it. Agent Logan
4 mentioned Henry Salley, but all he mentioned was that
5 Harry Pannirello told him something about Henry Salley,
6 so although three people mentioned him, only two actually
7 gave evidence against Henry Salley.

8 The first of these two was Harry Pannirello.
9 I think everybody remembers Mr. Pannirello. And he said
10 that he once, on one occasion, one occasion, met Henry
11 Salley when he and Provitera were parked in their car,
12 Henry Salley came over to them in the parking lot of Howard
13 Johnson's and introduced himself. Now, that, of course,
14 implies, and he said, that he had never met him before
15 and that was the only time that he had ever saw Henry
16 Salley.

17 Then the three of them went into the restaurant
18 and there was a conversation there which lasted for half
19 an hour, perhaps 45 minutes, maybe an hour. Did you hear
20 anything said about that there was any narcotics dis-
21 cussion in this conversation? No. Don't you think
22 if there had been narcotics discussion here that the
23 prosecution would have brought that out to you? I think
24 it is safe to infer that the conversation in the restaurant
25 had nothing whatsoever to do with narcotics.

1 tp3
2 Then we hear Pannirello's version that Panni-
3 rello and Provitera left, but then they saw Robinson
4 pull up in a taxi and then they came back and went to a
5 room in the motel and there they had stated they had a
6 conversation, but the conversation there, again, was not
7 with Salley. Even the testimony they gave only at that
8 time has Salley present.

9 And remember this, Pannirello, who says he
10 spent 30 minutes to an hour in a restaurant with Henry
11 Salley, who then spent some more time in a motel room
12 where Henry Salley, although apparently not participating
13 in a conversation, was present, he couldn't identify Henry
14 Salley in this courtroom. And Henry Salley was sitting
15 at that time right where he is sitting now in the direct
16 line of vision from the witness chair where Harry Pannirello
17 was sitting and had been sitting for his lengthy direct
18 examination. And sitting there he couldn't identify Henry
19 Salley. I think that is highly significant.

20 I will talk about that later.

21 Now, who is the other accuser here? Well,
22 Pasquale, or Jimmy, as he likes to be known, Provitera.
23 He comes in here and he tells us -- mind you, this is
24 after Pannirello has struck out -- he tells us, oh,
25 yes, I saw Henry Salley on three occasions. Three

1 occasions? The first time was in a parking lot and at that
2 time he was introduced by Warren Robinson and, mind you,
3 Warren Robinson was ther and Pannirello was there, he
4 says. Provitera gave one of this famous packages to
5 Robinson at that time, he claims. What did Salley do?
6 Well, he was just there.
7

8 Then we have a second occasion on which Provitera
9 met Salley, he says, a couple of weeks later, met Salley
10 in that same parking lot and he gave Salley a package.
11 This time there was nobody else there, so nobody, except
12 Henry Salley and Provitera, could say whether that incident
13 took place or not.
14

15 Then we have the third occasion that he says a
16 couple of weeks later again. He says he met Salley, and
17 this time he met him at the Howard Johnson's, he says,
18 and that was the time when they went to a restaurant.

19 Now I ask you to compare that with Pannirello,
20 Provitera's boss, in the drug business. Pannirello says
21 Salley came up to the car and introduced himself, but
22 Provitera says, "Oh, we knew him because I had seen him
23 twice before and on one of those occasions Harry Pannirello
24 was there." Now, where is the conflict here?

25 Well, you know, if this were Perry Mason it
would be easy to tell when a witness is telling the

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truth, because at about this time somebody in the court-room would be standing up and saying, "Well, this is what the truth is," and you would have a confession and so on. In real life it is a little more difficult. You have got to look at the little things.

Of course, if Jommy Provitera says, "I gave a package of narcotics to Henry Salley," and Henry Salley says, "That never happened," well, you can't -- well, you don't have a lie detector, so what tests do you use to see who is telling the truth? Well, one of those tests is, do people tell the same story? How do you account for these divergences in the testimony between Pannirello and Provitera as to when Salley first came up to New Jersey, as to how often, as to what went on?

You are going to get from the prosecution, well, this is a badge of truth, that there is discrepancies in a story, no two people remember alike. But this is serious stuff. They had a lot of time. You heard Provitera, and you heard it from one of the agents, that Provitera met Agent Nolan some 20 times at least, he has met with the staff of the U.S. Attorney's office, Mr. Curran's office, he has met with people there, he has met with other agents. This is not a witness that they brought in off the street and asked him about something

1 tp6

2 that happened a year and a half ago and didn't have an
3 opportunity to refresh his recollection, this is a witness
4 that came in here, knew exactly what he was going to say,
5 because he had been over it so many times with agents,
6 with prosecutors and possibly with each other, although
7 there is some denial of that.

8 One thing that struck me here in this case was
9 none of the prosecution witnesses seemed to be very exact
10 about time. It was always -- well, the best you could
11 get, really, from them was a month, and sometimes you
12 -- couldn't get that. No one seemed certain of the time.

13 Of course, this makes it a little more difficult
14 to defend a case of this kind because it is hard enough
15 for someone to say, "Well, on October 16, 1972, this is what
16 I was doing," it is almost impossible, unless it was an
17 event of some particular significance, but when you have
18 the time stretched into a period of months, weeks and
19 months, well, it is impossible at all for a defendant to
20 come in and show you conclusively what he was doing that
21 day.

22 I tried in my cross-examination to get some kind
23 of pin-down as to when this happened, these things
24 happened. Now, I recall that Pannirello had testified
25 that the one occasion on which he met Henry Salley was

1 tp7

2 early in November, even though the indictment says it
3 happened in October. But Pannirello says early in
4 November.

5 Provitera, well, his three meetings, he
6 stretched them out starting with some time in September
7 and ending up, with a little prodding, ending up also
8 in early November.

9 That is the prosecution's case against Henry
10 Salley on their direct case. Some other things came out
2 11 later which I will talk to you about.

12 Henry Salley was one of two defendants in this
13 case to take the stand and to tell you that he had nothing
14 to do with Harry Pannirello or Jimmy Provitera and he had
15 nothing to do with heroin. Henry Salley -- you saw him
16 testify, you have seen him sitting here -- he didn't
17 desert the Armed Forces of the United States in war-
18 time. Here is a man that wore the uniform of our country
19 with pride and with distinction. He was a decorated
20 veteran of the Korean War.

21 He told you he is getting a disability pension
22 from the Army, as well as a pension from the job he had
23 with the railroad. He didn't have a lapse of memory over
24 what he was doing, what kind of work he was doing for
25 the entire year 1955 or the entire year 1956. He told

1 tp8

2 you for 18 years he was working for that railroad in
3 Washington, D.C., and he would still be working for it
4 except that he was retired on a disability.

5 Salley tells you that he never saw Pannirello
6 or Provitera before they came into this courtroom. Now,
7 who are you going to believe? Are you going to believe
8 those two or are you going to believe Henry Salley? I
9 don't think you will find much difficulty with this.
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2 Let me just touch on a couple of things that
3 may give you some difficulty in what should be an
4 easy exercise for you.

5 You may ask yourselves, well, how could
6 Pannirello and Provitera name Henry Salley if he never saw
7 them before and all of a sudden, you know, there is a
8 Henry Salley and they are talking about a Henry Salley.

9 Well, the prosecution would probably tell you
10 that. There could be many explanations for that.
11 I will just give you one and see if that pieces to-
12 gether.

13 The prosecution puts on a witness here, Tennes-
14 see Dawson. Now, Dawson never said that he knew Salley
15 during his testimony, but Salley, on his testimony, said,
16 "Yes, I knew Dawson. He came into that store where I
17 was doing some carpentry work for Warren Robinson and
18 I met him on a couple of occasions. So now you
19 have Dawson knowing Salley and knowing Robinson.

20 Dawson knew that Salley was friendly with
21 Robinson. Chances are if he was in that store that he
22 also knew that Robinson, sometimes with Salley, came up
23 to New York City to buy clothes for the store.

24 Now, this October and November, 1972 we have
25 heard that Tenneseee Dawson was wearing two hats. On

2 the one hand he was feeding information to Agent Logan to
3 keep himself out of jail, but he says, "Well, I was hold-
4 ing back." And why was he holding back? Because
5 at the same time he was continuing to deal in drugs.

6 Anybody who has seen any spy movies would know
7 that the way you have to do things if you are double
8 agent, you have to use a little subterfuge.

9 Now, Dawson admits he was a customer of Pan-
10 nirello. He bought drugs from him. Yet at this
11 particular time he might have been a little reluctant to
12 do it himself. Isn't it feasible that perhaps Dawson
13 sent some people up there to buy drugs from Pannirello and
14 Provitera and told them names to use? That is just one
15 possible theory. There could be others, but in any
16 event, what you have to consider is whether the pros-
17 ecutution has made out a case beyond a reasonable doubt
18 that Henry Salley was in New Jersey at all. I leave you
19 with that thought.

20 Pannirelly and Provitera and Pannirello's bro-
21 ther John, they were arrested in New Jersey and they were
22 charged with a drug conspiracy in New Jersey. Now, if
23 Henry Salley was not an afterthought later thrown in when
24 Pannirello and Provitera needed names to stay out of
25 jail, how come when the drug transactions that Salley sup-

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2 posedly participated in took place in New Jersey, why
3 wasn't he chanrged in that conspiracy? I will tell
4 you why. Because it was an afterthought, at a
5 time when these two sterling gentlemen needed to give up
6 names, they needed to give up names to stay out of jail,
7 and that's exactly what they did.

8 If they never saw Henry Salley, wouldn't
9 that account for the fact that Pannirello wasn't able to
10 identify him. And wouldn't it also account for the
11 fact that when they are pressed for their stories in-
12 dividually there are these glaring discrepancies between
13 the two stories?

14 Ladies and gentlemen, you didn't leave your
15 common sense in the jury room with your hats and coats.
16 And the time to use it is when you deliberate on this
17 case, and I think your common sense will tell you that
18 that accounts for the discrepancy, that that accounts
19 for the lack of identification, and that shows you who is
20 lying in this case, and it is not Henry Salley. The
21 guys that are lying in this case are the guys that are in
22 there by utter greed, Provitera and Pannirello.

23 On cross examination of Mr. Salley the
24 prosecution brought out some facts that they may talk
25 to you at some length about and that they think are

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2 somehow gambling.

3 very quickly.

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Well, let me talk about one of them

4 In 1973 Mr. Salley pleaded guilty to possession
5 of a drug called Preludin. You heard it was a diet
6 pill.

7 Well, of course, when I had asked him has he
8 ever dealt in narcotic drugs he said no. Well, he
9 didn't consider a diet pill to be a narcotic drug, even
10 though under the law it is, and that's why he paid that
11 \$100 fine in Virginia.

12 But I think you folks will
13 give this diet pill the weight that it tries to have
14 people lose. I think that this is a red herring
15 and I don't think you will have any difficulty with that
16 in determining whether Henry Salley was telling the
17 truth, which is the only basis for which they could
18 introduce that.

19 Then we have the very damaging thing about the
20 hotel registration. Well, you heard the explanation
21 here that Henry Salley, after refreshing his recollection,
22 remembered that he did, in addition to the two trips to
23 New York with Warren Robinson, he did some time after his
24 father died in October, 1972, he says he did go to New
25 Jersey with a friend and he stayed at a Howard Johnson's,
he does not know which one.

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2 Well, the government comes up with this
3 Exhibit 107, and it comes up with a witness that says --
4 and the witness, when asked, "Well, this particular card
5 does not show which Howard Johnson's it is," he says,
6 "Well, I know it had to be that one because it is in
7 the handwriting of the assistant manager there."
8

9 Now, you will be able to take this card into
10 the jury room with you and you will look and see what he
11 could find in the handwriting.

12 The name and address on top, that would obviously
13 have been written by the person that registered there, so
14 the only other writing on this card are the numbers on the
15 bottom line. That, this witness says, identifies the
16 location for the Howard Johnson's at which Henry Salley
17 stayed. I don't know.

18 Henry Salley admits he stayed at a Howard John-
19 son's. He doesn't know which one. And I submit that
20 this exhibit does not clarify it for you and certainly
21 that witness does not.

22 Consider one other thing. This exhibit shows
23 that the room occupied here was on November 28th. Now,
24 the indictment says October. Stretching it we have
25 gotten into early November. Now are they going to tell
us that this happened November 28th? I don't think you

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2 are ready to accept that. That would contradict their
3 own tienstesses, who say that definitely it was in early
4 November. It would contradict the indictment, which
5 says October.
6

7 Oh, yes, one more thing on this exhibit.
8 Henry Salley told you, very frankly, he is separated
9 from his wife, he went up there with a lady friend.
10 Now, this card here, number of guests, it says one.
11 If you find that it was Henry Salley, you might find
12 him guilty of beating a hotel out of the price of a
13 double room, but that's not what is charged here, ladies
14 and gentlemen, the charge is a drug conspiracy.

15 Obviously if you don't believe the testimony
16 of Pannirello and Provitera you have a duty to acquit
17 Henry Salley.

18 Of all the prosecution witnesses here, and they
19 were given quite a going over by various defense counsel
20 because most of them had criminal records and were in here
21 solely to kepe themselves out of jail, they were testifying
22 here in the hope that they would be able to keep themselves
23 out of jail, but I think there was a difference between
24 somebody like a Dawson or a Barnaba. We can under-
25 stand that. From their earliest days they somehow fell
into a life of crime and Dawson, I think, said he spent

2 about half of his adult life in jail, Barnaba has been
3 in and out of jail. You could understand that a person
4 like that; it is the only life he knows and he will
5 go back to it. That happens from time to time.

6 But how do you equate that with people like Harry
7 Pannirello and Pasquale Provitera? These fellows have
8 been to school, they had jobs. They were in this for
9 pure, pure greed. They wanted to get rich and they
10 wanted to get rich by peddling human misery. And
11 is there any doubt that to stay out of jail they would sell
12 out their mother? Of course not. They would do any-
13 thing to stay out of jail.

14 I asked the last question I asked Provitera on
15 cross examination, I said, "Would you lie to stay out of
16 jail?" And I remember his answer very well, as I am
17 sure you do, he said, "Not under oath."

18 And at that point I heard laughter from the
19 jury box, which is what that answer deserved. Of
20 course he would lie under oath. What does an oath mean
21 to a bum like that?

22 Now, I don't see any way whatsoever in which
23 you can accept the word of Pannirello and Provitera
24 over the word of a Henry Salley. And by the way,
25 we don't have to prove anything to you here. There
is a presumption of innocence. In other words, if you

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2 can't make up your mind as between the two, that may
3 be the basis for a reasonable doubt. All we have to do
4 is leave you with such a reasonable doubt as you will hear
5 it defined. We don't have to convince you. It is
6 the prosecution that brings this case that has to con-
7 vince you beyond a reasonable doubt. Bear that in
8 mind.
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Now, even though I don't think that for one moment you are going to believe that the testimony of Pannirello and Provitera is sufficient to convince you beyond a reasonable doubt of the guilt of Henry Salley, I do have to anticipate, because this is the last time I am going to talk to you, and I have to anticipate for the moment that perhaps you will believe this.

Now, if you believe them then you have the further problem of deciding did Henry Salley knowingly participate in this conspiracy. If you believe the testimony that he picked up the package on the one occasion from Provitera and he was present on the other two occasions, if you believe that, does that mean that he knowingly joined and engaged in this widespread conspiracy that ranged from the Bronx to Manhattan to New Jersey to Washington? Did he thereby know that he was joining this conspiracy?

That is a factor because that is an element of the prosecution's proof. They have to convince you beyond a reasonable doubt not only that he was in New Jersey, not only that he picked up drugs, but that by doing so he knowingly joined this widespread conspiracy.

Remember, he is not charged here with being part of the Pannirello New Jersey conspiracy. He is not

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2 charged with a substantive count. He is not charged
3 with deceiving the hotel.

4 He is charged with participating in this
5 widespread conspiracy and the only way that you can
6 convict him of participating in this widespread con-
7 spiracy is if you find that he knew that he was joining
8 it and did so knowingly, with his eyes wide open.

9 I submit to you that after you hear the
10 court define conspiracy you are going to find that
11 conspiracy in the criminal world is very much like a
12 legitimate business venture, a partnership. In this
13 case, because of the number of defendants, if you find a
14 conspiracy, I think you would be entitled to equate that
15 with a large business even.

16 Now, even if you believe every word that
17 scoundrels like Pannirello and Provitera tell you, then
18 what has Henry Salley done. In the government's
19 opening here you heard Mr. Phillips tell you that
20 Henry Salley was a customer of the conspiracy.

21 Well, I think the evidence at best, if you
22 believe it, indicates that he was picking up for a
23 customer.

24 Now, I ask you, if you buy something at Macy's
25 or pick up something for someone else at Macy's, does that

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2 make you part of the operation at Macy's? That is a
3 thought that you will have to decide, if you get that far.
4 I don't think you will because I don't think that there
5 is any basis for you to take the word of a Provitera,
6 even if he tells you he wouldn't lie under oath to stay
7 out of jail. I don't think you are going to take the
8 word of a Pannirello or Provitera over the word of a Henry
9 Seeley. I don't doubt that for one moment.

10 I thank you for the attention that you have
11 shown throughout this case and I am confident that your
12 verdict as far as it applies to Henry Salley will be
13 a just one and that you will find Henry Salley not
14 guilty. Thank you.

15 THE COURT: Ladies and gentlemen, I have to
16 tell you we are doing one thing a little different
17 during all of the summations, that is, after each one is
18 finished I am going to take or I am going to have you
19 take a five-minute break. I will not interrupt any of
20 the summations for a break. Therefore, we will do
21 it at the end of each one.

22 Mr. Marshal, will you take the jury out,
23 please.

24 (The jury left the courtroom.)

25 THE COURT: Mr. Siegel, I would suggest that

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2 you go next. That is the order. As I indicated, I
3 will not interrupt, even for the lunch hour. So when you
4 finish, you finish and when that ending is we will take
5 our luncheon break.

6 MR. SIEGEL: Your Honor, as I indicated pre-
7 viously, I should hope I don't go more than 45 minutes,
8 because if I do then I am doing something wrong.

9 THE COURT: Don't worry about it, not now.

10 All right, gentlemen.

11 (Recess.)

12 (Jury present.)

13 THE COURT: Mr. Martin J. Siegel.

14 MR. SIEGEL: Judge Duffy, brother defense
15 counsel, Mr. Curran and his staff, Miss Hare, ladies and
16 gentlemen of the jury.

17 Within the next few days it will become your
18 solemn duty to decide the guilt or innocence of the
19 accused Mr. John Springer. In order for you to
20 arrive at your decision you may only consider the
21 evidence adduced in this trial, that is, the testimony which
22 came from that chair and the exhibits entered into
23 evidence. You are to consider nothing else.

24 The burden of proving the guilt of Mr.
25 Springer is on the prosecution, nobody else. The

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2 prosecution has to convince you beyond a reasonable
3 doubt that Mr. Springer is guilty of the crimes
4 charged.

5 Mr. Springer is under absolutely no obliga-
6 tion to put forth any evidence. He is under no obliga-
7 tion to prove his innocence. The government must prove
8 his guilt beyond a reasonable doubt. If they fail then
9 it is your sworn duty, without hesitation, to acquit Mr.
10 Springer.

11 Now, there has been mention made in some of the
12 openings and Mr. Pollak made reference in his summation that
13 before you retire to deliberate in this case you are not --
14 I repeat, not -- to leave your common sense outside the
15 jury room. You are to bring it inside with you. You
16 are to use the same common sense which you use in your
17 everyday life to weigh the credibility of the
18 evidence, testimony, everything you have heard in this
19 courtroom. You bring it in with you.
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2 The government has made certain allegations
3 against Mr. Springer. These allegations are that Mr.
4 Springer was part of some large drug conspiracy involving
5 over 30 people and also that in November, 1971, he
6 possessed one-eighth kilogram of heroin. That is what the
7 government has charged. Let's look at what the government
8 has shown.

9 First let's look at the conspiracy charge. Let's
10 see if the government has shown enough evidence, competent
11 evidence, to show that Mr. Springer is guilty beyond a
12 reasonable doubt. I contend that they have not.

13 Let's inspect very carefully the testimony of
14 the witnesses who testified against Mr. Springer. Let's
15 go in reverse order. The last one to testify on the
16 conspiracy charge against Mr. Springer was a Mr. Thomas
17 Tennessee Dawson.

18 You remember Mr. Dawson. He was the individual
19 who has spent most of his adult life behind bars, in prison.
20 In fact, while he was on parole from his third conviction
21 and while he was supposedly helping Agent Logan, what was
22 he doing, he was selling narcotics. But he felt that he
23 wasn't breaking his word to Agent Logan. He felt as long
24 as Agent Logan didn't know about it it was okay.

25 Now, what did he say about John Springer?

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2 Ladies and gentlemen of the jury, Mr. Dawson said zero.
3 He said absolutely nothing about John Springer.

4 His testimony, which the government hopes you
5 will imply against Mr. Singer, is that Mr. Dawson some
6 time in the spring of 1971 was over a person's house,
7 Hank's house. Now, during the course of the trial the
8 prosecution has attempted to show that this person Hank
9 is the accused Mr. Springer.

10 Now, what happened at this meeting which Mr.
11 Dawson testified about? Mr. Dawson testified that
12 narcotics were discussed. There is absolutely no evidence
13 in that record to show what this person Hank said about
14 narcotics. There is nothing to show that Hank sold
15 narcotics or obtained narcotics. There is just a con-
16 versation.

17 Now, the reason why I say this is absolutely
18 zero against Mr. Springer is because the U.S. Attorney
19 who was conducting the direct examination of Mr. Dawson
20 stood by this lectern and said, "Mr. Dawson, I would like
21 you to look around this courtroom and see if you can see
22 this person Hank."

23 So Mr. Dawson looks around the courtroom and
24 says, "I don't see him here. I don't remember what he
25 looks like."

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2 So we don't know anything about this person Hank.
3 There has been no testimony that this Hank who Dawson
4 refers to was white, black, chicano, American Indian,
5 a man from Mars. Was he tall, was he short, did he have a
6 beard, did he have a mustache? The records barren of
7 any mention of what this person Hank looked like.

8 But the government is going to say, "Well, this
9 person Hank lived near 233rd Street in the Bronx and he had
10 a dog."

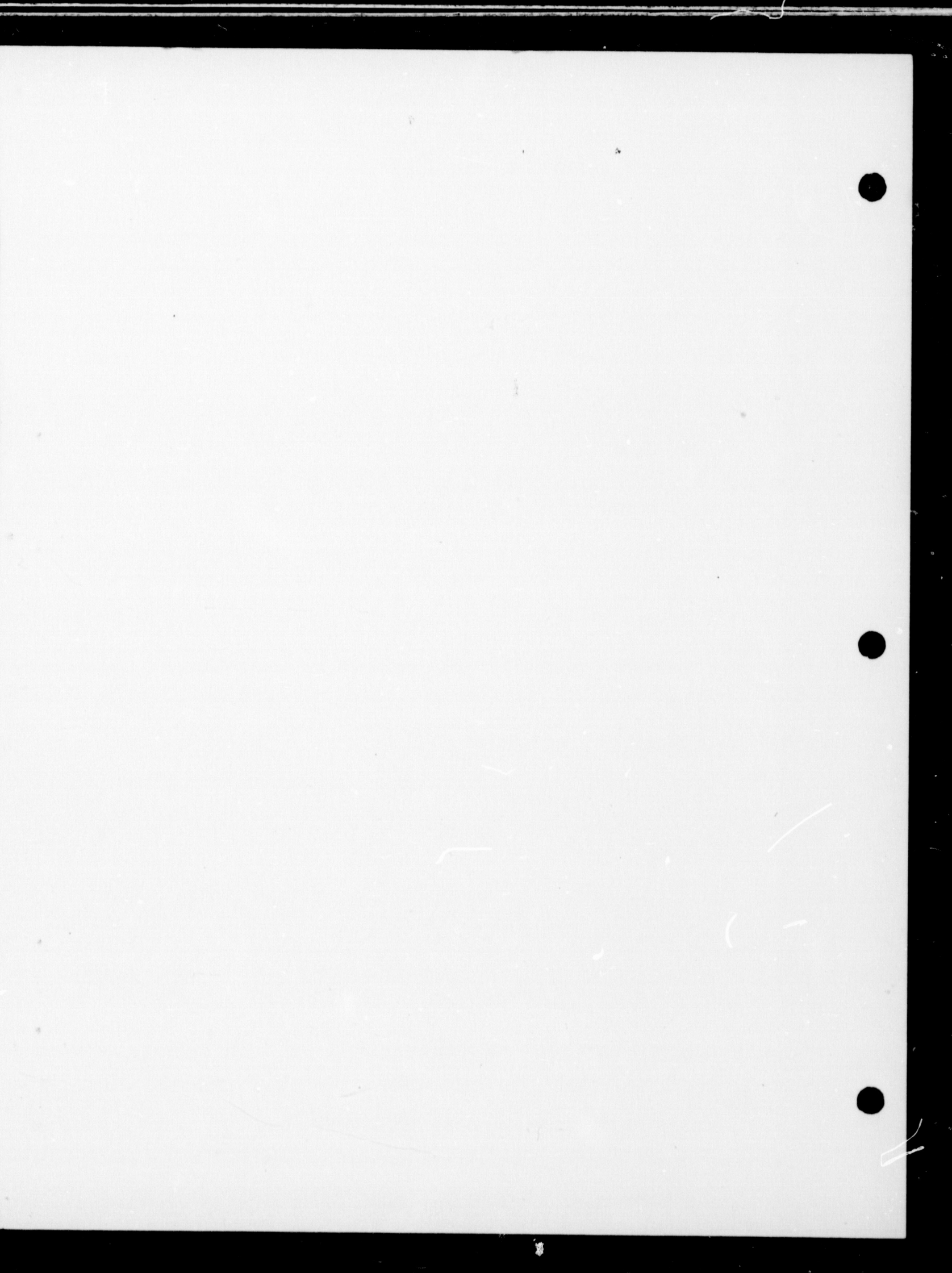
11 Well, Mr. Dawson testified on direct examination
12 that this dog he saw was a Doberman Pinscher. Jumping
13 ahead a little bit, Mr. Barnaba said when he was supposedly
14 in Mr. Springer's house that Mr. Springer had a Great
15 Dane.

16 So how in heaven's name can we equate this person
17 Hank who Dawson refers to to the accused John Springer?
18 There is no connection at all. No connection at all.

19 On cross-examination I asked Mr. Dawson, I said,
20 "Did you ever tell Agent Logan about this supposed meeting
21 in Hank's house?"

22 He says, "Yes, I did."

23 I said, "Mr. Dawson, here are Agent Logan's
24 reports. Does that refresh your recollection when
25 you supposedly told Agent Logan?"



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2 So he looks through the reports. He sees no
3 mention of it.

4 I asked him, I said, "Did you testify before the
5 grand jury about this meeting?"

6 The answer is "No."

7 Just when he comes into this courtroom he makes
8 reference to the supposed meetings at Hank's house.

9 Therefore, ladies and gentlemen of the jury,
10 I ask you to totally disregard the testimony of Thomas
11 Tennessee Dawson as it pertains to this man, Mr. Springer.

12 I say again, where is the proof? Where is the
13 proof the government hopes to rely on to prove Mr. Springer's
14 guilt? It's non-existent.

15 Next in the hit parada you see Mr. Harry Panni-
16 rello take the witness stand. Harry Pannirello testified
17 that he met John Springer on one occasion, one occasion
18 only, back in 1971.

19 Again I asked him to refresh his recollection
20 as to what he told Agent Logan or what he testified before
21 the grand jury. Well, he sat in that chair, looked through
22 the reports, and said, "There is no mention of it."

23 There was then questioning on direct examination
24 as to what supposedly happened involving Mr. Springer.
25 Well, Harry Pannirello testified that before he met this

1 hp5

2 person Hank who he identified as Mr. Springer he had a
3 conversation with an individual and this individual said,
4 "This guy Hank and this guy Paulie are partners in
5 narcotics."

6 Was Hank present when this statement was made?

7 No. Was Paulie present when this statement was made?

8 No. Was there ever any proof to show that Mr. Springer
9 or this person Hank acknowledged this? The record is
10 barren. There is no evidence at all.

11 I ask you to put yourself in the position of
12 Mr. Springer. There is the story about people telling
13 tales out of school. Somebody said you are involved in a
14 crime. They don't tell you about it. They never confront
15 you with it. So I say, where is the evidence? Is
16 that evidence enough to convict Mr. Springer? I say no.

17 Then Mr. Pannirello made reference to a con-
18 versation in Hank's house between this individual and this
19 Paulie, a conversation on page 3512 of the official trans-
20 cript. There was a question about money. One individual
21 says, "Hey, do you have the money you owe me?"

22 This Paulie says, "I will get it for you soon,"
23 period. That is the only testimony we heard about any
24 conversation in this person Hank's house.

25 Does that involve narcotics? No, because there

1 hp6

2 is no showing what was involved. There is no showing
3 that this person Hank took part in the conversation.
4 So I say, where is the evidence? Where is the evidence?

5 Ladies and gentlemen of the jury, that is the
6 substance of Mr. Pannirello's testimony.
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2 Now, again, Mr. Pannirello was asked on cross-
3 examination. I said to him, "If you say you only saw this
4 person Hank one time back in '71," and he is a little
5 unsure of what month this occurred, I said to him, I said,
6 "Mr. Pannirello, does this person Hank, does he have a
7 mustache?

8 "I don't remember.

9 "Mr. Pannirello, did this man have a beard?

10 "I don't remember.

11 "Mr. Pannirello, were you shown pictures of Mr.
12 Springer before he came to court?

13 "Yes.

14 "Cojld you tell me about the way you were shown
15 these pictures?"

16 Well, he testified that a few months before he
17 testified, when he was upstairs in the same building, he
18 was shown a picture of Mr. Springer, not in a group, but
19 he was shown one picture. And the U.S. Attorney who was
20 talking to him said, "Isn't that Hank? Isn't that Hank?"

21 He said yes. That is what he said.

22 "Isn't that the one?"

23 He said yes, he said that, also.

24 Well, ladies and gentlemen of the jury, I submit
25 to you a person in the position of Mr. Pannirello, about

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2 to be sentenced on a crime, being asked to cooperate, being
3 shown a picture of an individual alone, not in any line-up
4 or in any group of pictures, but he was shown one picture --
5 now I ask each and every one of you, is that fair? Is
6 that the way an identification should be made of an
7 individual?

8 I asked Mr. Pannirello more about this picture
9 incident. I said, "Mr. Pannirello, who else was present
10 when this happened?

11 "I don't remember.

12 "How long did it last?

13 "I don't remember.

14 "When did it happen?

15 "Some time in the fall.

16 "What month?

17 "I'm not sure. I don't remember."

18 You will also remember Harry Pannirello, and I
19 give him the nickname the get-even kid, because he testi-
20 fied from that chair and he said that everybody turned
21 their back on him and he wants to get even. So I ask you
22 to consider Harry, the get-even kid, Pannirello's testimony
23 in that light.

24 And even in the most favorable light which the
25 prosecution may argue to you, the record still stands.

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2 The only conversation which occurred in this person Hank's
3 house is a question about money and there is no showing
4 that this person Hank ever took part in this conversa-
5 tion.

6 - Again I submit to the jury, where is the proof?
7 Where is the proof against Mr. Springer?

8 Well, last but not least we have John Barnaba.
9 Mr. Barnaba testified that he met the accused Mr. John
10 Springer some time during the month of August, 1971.
11 He said at that time he gave Mr. Springer a package.
12 He didn't testify what was in that package, but he said he
13 gave him a package.

14 Then he said that he met Mr. Springer again in
15 November of 1971 and gave him one-eighth of a kilogram
16 of heroin on three different occasions. That is Mr.
17 Barnaba's testimony.

18 However, let's look at the record. Let's look
19 at Mr. Barnaba's testimony carefully.

20 On cross-examination I showed him certain reports
21 prepared by federal agents reflecting interviews and
22 conversations with Mr. Barnaba. I showed him a report
23 which was prepared in September of 1973 by Special Agent
24 Torrey Shutes. And in that report I used it to refresh
25 his recollection. I said, "Mr. Barnaba, did you ever tell

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2 Agent Shutes that you met this person Hank in December of
3 '70?"

4 He said, "Well, I don't remember."

5 So I showed him the document. And lo and behold,
6 he remembered, but he said he had made a mistake. This
7 is September of '73.

8 Then I said, "Mr. Barnaba, did you ever talk to
9 a federal agent back in November of '73 about meeting this
10 person Hank?"

11 He says, "Well, I'm not sure."

12 I said, "Did you ever tell this agent that you
13 met him in the first week in April of '71?"

14 He says, "I don't remember."

15 So I said, "Here, Mr. Barnaba, here is the docu-
16 ment, look at it, refresh your recollection. Do you
17 remember now telling that agent in November of '73 that
18 you met him during the first week of April?"

19 He says, "Yes, that refreshes my recollection,
20 but I made a mistake then. I met him during July or
21 August of '71."

22 Well, next I took a copy of notes. I will refer
23 to them as Mr. Barnaba's memoirs in crime. It was a list
24 of pages, approximately 30 pages in length, written in
25 Mr. Barnaba's handwriting. And in that report, which was

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2 prepared approximately in December of '73 or January of
3 '74, he makes reference to meeting this person Hank during
4 the last week in April of '71.

5 Well, I showed him his memoirs and he said, "Well,
6 that's a mistake, because I met him in July or August."

7 I said, "What do you mean, Mr. Barnaba?"

8 Well, Mr. Barnaba had gotten a photostatic copy
9 of his memoirs in crime and in the copy back in his hotel
10 room or wherever he is staying he had crossed it out and
11 then put July or August.

12 So within a period of approximately four or five
13 months he has given us different dates when all this
14 occurred. Now, I was not holding him to a specific day
15 like the 12th of the month or the 15th, but I am talking
16 about months and in some instances years.

17 Now, you all had an opportunity to view Mr.
18 Barnaba, you all had an opportunity to see the type of
19 individual he is.

20 -- Further on cross-examination I made reference
21 to a previous statement he had made about this person Hank.
22 In fact, I will refer to it now.

23 I said to him on page 1726 of the record, I asked
24 him about a statement in which he said that he had never
25 dealt in narcotics at all with this person Hank. And my

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2 questioning went as follows: I said, "Do you remember
3 being asked this question and giving this answer:

4 "Rogers:" -- which is Frank Rogers, the Special
5 District Attorney for New York in charge of narcotics
6 prosecutions -- "What about Hank?

7 "Barnaba: Hank, I mean, I would talk to, but
8 I haven't seen him in a while.

9 "Rogers: You never transferred anything to him?

10 "Barnaba: No."
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Then I said, "Do you remember being asked that question and giving those answers?"

Mr. Barnaba responded, "If it is there."

I said, "It's here, Mr. Barnaba. Would you like to refresh your recollection?"

He said, "If you got it there, it is all right."

I said to Mr. Barnaba, "Were you lying when you made those statements?"

He said, "I didn't look at it as lying, I was holding back."

That's his story.

Now let us look at Mr. Barnaba, the individual. Holding back to protect his friends? Ha, that's a laugh.

Mr. Barnaba, during wartime, was found guilty of desertion. Now, for those of us who have been in the military service and especially those of us who have been in a combat situation, you will know that we have little, little regard for a man like that, and Generally speaking a man like that considers his fellow human beings, his fellow soldiers as dirt, as the scum of the earth. He is the type of person who would bug out the first chance he has. He wouldn't

think twice.

There has been no showing of any great friendship between Mr. Springer and Mr. Barnaba, just a casual passing. But yet he was willing to hold back because he wanted to protect him.

A person who deserts, ladies and gentlemen, has no regard for anybody else. He is the lowest form of animal. Rather, I wouldn't even use the word "animal" because in nature animals tend to protect one another. Mr. Barnaba has no such feeling.

Now let us follow Mr. Barnaba's graduation, as I will say, to higher forms of knowledge.

Well, Mr. Barnaba did his undergraduate and graduate work in the state and federal penitentiaries of this area. He was found guilty of being involved in drug trafficking back in the early '50s and in the late '50s. Then after his second conviction, when he was placed on parole, the Parole Board found him to be such a good risk and such a reliable person that they revoked his parole and sent him back to prison.

Now, what is Mr. Barnaba's stake in the outcome of his testimony? Well, as you heard, and it was delved into by many of the defendant counsel, Mr. Barnaba was arrested in November of 1972. For what? Selling

1 narcotics. He attempted to sell a quantity of
2 narcotics to a police officer. What happened?
3 He got caught.
4

5 Then all of a sudden Mr. Barnaba felt that
6 rather than go on for a postgraduate work for the rest of
7 his life he said, "Well, I'm going to cooperate. I'm
8 going to make amends for my life of sin."
9

10 Ladies and gentlemen, leopards don't change
11 their spots. I doubt very much whether Mr. Barnaba
12 had any intention of changing. But there he is, he was
13 facing a lift count. So in consideration what was the
14 charge rendered against him? A class E felony, and
15 as we learned the maximum that carries is four years
16 imprisonment.
17

18 There has been no showing that as of yet
19 Mr. Barnaba has been indicted for tax evasion. Whether
20 this will be a consideration on his testimony I will let
21 you ladies and gentlemen of the jury to decide.
22

23 Remember, when you are inside deliberating
24 you have your common sense with you. You don't leave
25 it outside. You look at a person the same way you
judge somebody out in the street. You look at
the way a person talks, the way person testifies.

Now, each of us, we are all human beings, we

each have a way of determining how a person is testifying.
Does he seem like he is telling is the truth?

I ask you to remember Mr. Barnaba's testimony, a man sitting there, squirming, giving dates, incidents, changing at will, because, well, he was mistaken as far as the day, instead of April it was March, "But I don't know, it all happened around the same time."

Now, the court will charge you that Mr. Barnaba is an interested witness and he is somewhat concerned in the outcome of this trial, and as such his testimony should be carefully scrutinized.

You may in your discretion decide to adopt part of it or disregard his entire testimony.

Mr. Barnaba, in his testimony, made reference to a Joe Sharp. He said, "Joe Sharp was my stash. I used to give him narcotics, he used to hold it for me, and then when I needed it I used to get it back."

Well, ladies and gentlemen of the jury, you saw this mystical Joe Sharp. He sat right in that chair, only his real name is Joseph LaSalata.

Mr. LaSalata, and I questioned him on cross examination, I asked, "Have you ever been convicted of a crime?"

His answer, "No."

"Have you ever dealt with Mr. Barnaba on the subject of narcotics?"

Answer, "No."

"Were you Mr. Barnaba's partner in narcotics?"

"No."

"Did you ever act as a stash or a hiding place?"

"No."

Well, I ask you to adopt the testimony of Mr. LaSalata, a man with no concern in the outcome, a man who testified to the facts as he saw them. He met Mr. Barnaba on one occasion and their conversation dealt primarily with pigeons.

Now, the government has not shown the word "pigeons" to have anything to do with the narcotics. There has been showing that Mr. LaSalata is a fancier of pigeons and that's the only thing he spoke to Mr. Barnaba about.

Again I submit to this jury, what's the proof? What's the proof? Is that enough proof, the testimony of those three witnesses, to find Mr. Springer guilty of the charge of conspiracy to violate the narcotic laws? I submit that a reasonable doubt exists. In fact, I would further urge this jury that a suspicion hasn't even been shown beyond a reason-

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2 able doubt, no less guilt.

3 Mr. Barnaba, from that chair, gave totally
4 inconsistent statements with his prior conversations
5 with officers and with his debriefing. I ask you to
6 weigh the statements equally and give it zero weight
7 Disregard Mr. Barnaba's entire testimony as you may.
8 As triers of the fact you have the duty, if you so decide,
9 to disregard any witnesses' testimony, and I urge, ladies
10 and gentlemen of the jury, that you totally disregard Mr.
11 Barnab'a's testimony.
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Now, I look to the prosecution and I say where is the further proof necessary to sustain a conviction?

We have seen coming from that chair rental agents testifying that this defendant or that defendant lived at a certain address, signed a certain lease. Was there any such testimony as to where Mr. Springer lives? No. There hasd been no showing by a real estate agent, by leases, where Mr. Springer lives. So how can we assume that he lives in the area of 233rd Street?

In fact, jumping ahead, when he was arrested in December of 1973 he was arrested in an apartment approximately eight to 10 blocks from 233rd Street.

So there is no showing where Mr. Springer lives, and ladies and gentlemen of the jury, I submit that was the job of the prosecution, to show where Mr. Springer lived in 1971, and they failed.

Further, we have heard mention of this person Paulie. Well, there has been testimony in this trial that Paulie is in jail. I ask the prosecution, why wasn't Paulie called?

The defendant in this case, Mr. Springer, is absolutely under no obligation to put forth any

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2 witnesses or to prove his innocence. He stands before
3 you a man cloaked with innocence. There is no respon-
4 sibility for him to put forward any evidence.

5 So I say since this Paulie was in jail why
6 wasn't he called by the prosecution? Did they have some-
7 thing to hide, something to fear?

8 Again I submit that guilt beyond a reasonable
9 doubt on the charge of conspiracy has failed miserably.

10 Now, a week ago Saturday we were treated to
11 an experience of an arrest of Mr. Springer which occurred
12 in December of 1937. Now, as Judge Duffy will charge
13 you, that arrest in December of 1973 is not to enter in
14 your deliberations on the conspiracy charge. The only
15 weight that is to be given is to the weight that the
16 accused Mr. Springer in November of 1971 possessed
17 narcotics. That is the only weight to be given to
18 it.

19 Now let's look at that substantive count, as
20 we call it in the law, the possession charge from November,
21 1971. The only testimony has been that of Mr.
22 Barnaba. Ladies and gentlemen, I have been over
23 that quite carefully.

24 Let's look at this December, 1973 arrest.
25 First we started off with the testimony of Sergeant

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2 Martin O'Boyle is the same Sergeant O'Boyle who Mr.
3 Fisher made reference to the other day during the reading
4 of a stipulation. That is the same Sergeant O'Boyle who
5 call it what you may -- intimidated Frank Stasi.

6 Now, let's look at Sergeant O'Boyle's testimony.
7 Sergeant O'Boyle sitting in that chair said he came
8 to an apartment, came to an apartment house, with three
9 other officers. As they were going up the steps the
10 door was open for approximately five, ten seconds, and
11 there he saw behind that table Mr. Springer and in front
12 of him there was a white powder and tin foil on the
13 table. The door was shut. There came a time when the
14 door was opened and Mr. Springer was arrested in the
15 bathroom.

16 All well and good. Except on cross examina-
17 tion I asked Sergeant O'Boyle, I said, "Sergeant O'Boyle,
18 on this table where was the white powder?"

19 "I don't recall."

20 "Is that the same as 'I don't know'?"

21 "Yes."

22 "Where was this tin foil?"

23 "I don't recall, I don't know."

24 "Where was the defendant standing behind the
25 table? Was he standing to the left or to the right?"

"I don't recall."

"Now, Sergeant O'Boyle further testified that he made these obserbations while looking in at an upward angle. Now, this is another instance where I ask you to bring your common sense into that jury room. If a person is looking at an upwar angle at a flat object how can he see what is on top of it, the table? He can't, unless maybe he is Superman. But when looking up at an upward angle you can't see what is on top of the table.

Now, Sergeant O'Boyle testified truthfully when he said he didn't know where the substance was on the table, because he was never there. How could somebody look up at an angle and see what is on a flat object?

That was Sergeant O'Boyle's testimony, that he made the observations at an upward angle. He saw a white powder. He couldn't tell what it was.

I said to him, "Did you see a napkin dispenser on the table?"

"I don't recall."

"Did you see a salt and pepper shaker?"

"I don't recall."

Ladies and gentlemen of the jury, if somebody says to you, "Do you see a pencil on this podium" -- or

it was -- you can say, "Yes, I see it. It's right by the edge," or "it's in the middle," or wherever it is located. When a person like myself is standing behind the podium he can say, "Yes." He is standing directly in front of the podium, to the left of the podium, to the right of the podium. You can make these observations because you have seen it. But if somebody does not remember where items were on a table, where a person was standing by a table, I submit to you, ladies and gentlemen, there can be only one answer: maybe he just never saw it.

Next came Police Officer Casella. Police Officer Casella said he was present when all this happened. We saw all the exhibits of all the narcotics paraphernalia, what was seized. Then sitting in that chair the United States attorney said, "Mr. Casella, I would like you to look around and see if you can see the defendant John Springer."

No hesitation. "Yes, sitting right there." He pointed to the defendant Warren Robinson.

Now, this happened in December of 1973, three months ago, and this wasn't a short observation. He was with him for a few hours. Now, if you saw somebody for a few hours two months ago you would

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know what they look like.

I say it is coincidence only because during the testimony of Sergeant O'Boyle Mr. Springer was sitting in that area. However, before Agent Casella came on the stand I said, "Mr. Springer, move to the corner of the courtroom."

1
2 Now, was there conversation or collusion between
3 Police Officer Casella and Sergeant O'Boyle? I don't
4 know. I wasn't there. But, ladies and gentlemen of the
5 jury, I will let you make that decision, because if a person
6 is there and he sees something he should have no hesita-
7 tion. Why does he point to the wrong person? Maybe he was
8 there, maybe he wasn't, maybe this narcotics was there,
9 maybe it was a plant. I don't know.

10 Now, this evidence I submit is a smokescreen.
11 It's been used -- pardon my language -- to bamboozle you.
12 There has been no showing who this evidence belonged to.
13 If a police officer has a question of who it belongs to
14 how can we say, "Yes, it's Mr. Springer's." Just because
15 he says so? He can't even identify who he seized it
16 from.

17 Now, there was testimony by Sergeant O'Boyle that
18 there were two other officers present. There was a
19 Detective Wysocki and there was an Officer Nolan. Why
20 weren't they called to the stand?

21 I point the finger of accusation at the prosecu-
22 tion. They had an obligation, if there was a doubt, to
23 either place Detective Wysocki or Detective Nolan on the
24 stand. Why didn't they? Maybe they had something
25 to hide. I let you speculate.

1
2 Again, the defendant Mr. Springer is under no
3 obligation to put forward any evidence. He comes in this
4 courtroom, he says, "I am innocent. If you say I am
5 guilty prove it beyond a reasonable doubt."

6 So what do they do? We have this quote
7 incident in December of 1973, I say an incident done out
8 of exasperation, desperation, possibly because they feel
9 that Mr. Barnaba is so unconvincing as to his involvement
10 with Mr. Springer that they say, "Well, let's use this."

11 Now, I don't personally blame the prosecution
12 team sitting here. They are all honorable gentlemen.
13 But they have no control over what happens outside. They
14 have no control. They can't be there every minute of the
15 day. They weren't there on December 3, 1973. They can
16 only go by what the officers tell them.

17 And I ask you and the Court will charge you that
18 narcotics officers can be considered interested witnesses
19 and as such their testimony should be carefully scrutinized.
20 I ask you to disregard their testimony. It's inconsistent.
21 If a person sees something he sees it. If something is
22 on the top of a table you see it. You can say it's either
23 to the left or to the right or in the middle. Again, if
24 it was there.

25 I ask you to make the same observation. Looking

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2 up at an upward angle how can you tell what is on a flat
3 surface? Now, Sergeant O'Boyle testified that in a five-
4 to-ten-second period he was able to observe this white
5 powder anywhere from a half an inch to an inch, maybe
6 even an inch and a half in height, in little piles.
7 If he can be that exact why can't he tell us where it was
8 located?

9 People can memorize their testimony, but they can
10 never be prepared for the unexpected, and I think that is
11 what happened to Sergeant O'Boyle. I think he was caught
12 napping.

13 Now, I have made reference to certain incidents,
14 certain statements at this trial. Possibly your recol-
15 lection disagrees with mine. When Mr. Phillips or Mr.
16 Curran deliver their closing they may give you a completely
17 different version of the facts. When Judge Duffy gives
18 his summation he may give even a third version of the
19 facts.

20 Ladies and gentlemen of the jury, I ask you to use
21 your own recollection. Remember what came from that chair.
22 I welcome, yes, I welcome you to have read back any part
23 of the testimony I mentioned. This is your right as
24 jurors. If you don't remember testimony ask to have it
25 read back. Mr. Springer welcomes that. Mr. Springer

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2 has nothing to hide from the evidence adduced from that
3 chair.

4 When you finally go back and deliberate the
5 guilt or innocence of Mr. Springer, even though each of
6 you are sworn jurors sitting in the jurybox, I would like
7 you for a minute to sit in that chair where Mr. Springer
8 sits. Try to picture the agony, the anguish going through
9 him sitting here for weeks upon weeks, all of a sudden
10 hearing a piece of evidence there and a piece of testimony
11 there which really doesn't involve this man. Mr. Springer
12 is a human being like you or I and he deserves this con-
13 sideration, this thought.

14 Ladies and gentlemen, it's your duty, it's your
15 sworn duty to deliberate, and I ask you that if you find a
16 doubt, a reasonable doubt, then you must, you absolutely
17 must acquit.

18 I urge you to bring back a finding of not guilty
19 on both counts charged against Mr. Springer, not because
20 of sympathy or remorse, but because the government has
21 failed. They made a promise to you in their opening saying
22 that they were going to prove Mr. Springer's guilt beyond
23 a reasonable doubt. Ladies and gentlemen, they have failed,
24 and failed miserably.

25 Each of you have in your hands the power to

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2 prevent Mr. Springer from being branded as a narcotics
3 violator for the rest of his life. It's a power which I
4 ask each and every one of you to exercise with care and
5 caution.

6 Again, this may sound repetitious, but remember
7 the key phrases, beyond a reasonable doubt. You have got
8 to look at the evidence carefully and very impartially.
9 You have got to say what did they say, what did they prove,
10 and if they have not proved Mr. Springer's guilty beyond a
11 reasonable doubt then I say bring in a verdict of not
12 guilty.

13 Now, under our system of jurisprudence, as Mr.
14 Springer's defense counsel, this will be the last opportunity
15 I will have to address you. Now, once the defense counsel
16 finish their summations the government will then deliver
17 their summation. No matter how I may sit there and
18 fume with their use of logic, their statements, I am not
19 given the opportunity to come up in rebuttal. So as they
20 say, this is my last shot.

21 Therefore, I ask this jury that they bring in a
22 fair and reasonable verdict for the accused Mr. John
23 Springer and that verdict, ladies and gentlemen, is a find-
24 ing of not guilty on both counts. Thank you very much.

25 THE COURT: Ladies and gentlemen, it's lunch-

1 hp6

2 time. We will be back at 2 and resume then.

3 (Jury left the courtroom.)

4 THE COURT: You gentlemen and ladies remember that
5 I admonished you at the beginning of this series of
6 summations to keep within the evidence. I am going to
7 remind you now, I am going to remind you after lunch, I am
8 going to remind you everytime when we are actually not with
9 the jury, because I want you to do just that.

10 All right. Be back here at 2 o'clock.

11 (Luncheon recess.)

12 - - -

A F T E R N O O N S E S S I O N

2.00 P.M.

(In open court, in the absence of the jury.)

THE COURT: Mr. Panzer, you are next.

MR. PANZER: Yes, your Honor.

MR. WARNER: I am covering for Mr. Richman.

MR. DOWD: Your Honor, may I put on the record what I discussed in the robing room that I may leave at some point this afternoon because of reasons of health. My client consents.

I don't see Mr. Richman here. I ask Mr. Leighton if he would cover for me in my absence.

MR. LEIGHTON: I would have no objection.

THE COURT: Fine.

MR. DOWD: Thank you, your Honor.

(Jury present.)

THE COURT: All right, Mr. Panzer.

MR. PANZER: May it please your Honor, fellow members of the Bar, Hattie Ware, ladies and gentlemen of the jury.

The first thing I would like to say is that I speak for one person and one person alone, and that is the person I represent, and that is Hattie Ware, the young

1 tp2

2 lady that is sitting here.

3 Now, we spent a great deal of time, ladies and
4 gentlemen of the jury, picking a jury when we wanted to get
5 the fairest possible jury that we could get, and I think
6 we have.

7 A jury system is a unique system and I would
8 like to say something about that.

9 Before we had the jury system we had what was
10 known as trial by combat or what they used to say in olden
11 days wager of battle. What would happen way back then was
12 that if somebody was accused of a crime, they would get on
13 a horse and they would be given a lance and a sword and they
14 would be asked to defend themselves. Then somebody else
15 who represented, say, the people or the government at that
16 time would get on a horse, a sword and a lance, and they
17 would be asked to fight this person, and it would be a fight
18 to the death.

19 Well, that didn't prove too reliable, because
20 too many innocent people got killed. So we have what is
21 now known as the jury system. But let's not fool our-
22 selves, ladies and gentlemen of the jury, it is still a
23 battle. The battlefield is here.

24 Judge Duffy, he's the referee, and he is here
25 to make sure that when we fight we fight fair. And the

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2 poison that some of the witnesses for the prosecution have
3 spurted out against my client are just as deadly as an
4 sword or lance.

5 Now, traditionally juries have been the protector
6 of individual rights. Juries are very important to our
7 system. Juries are asked to weigh the evidence and the
8 evidence only in deciding on controversial issues. That's
9 why we have juries.

10 Now, I as a lawyer have a duty and it is a sworn
11 duty, and the duty is to my client, Hattie Ware, and that's
12 to make absolutely certain that she gets a fair trial and
13 also to make absolutely certain that no innocent person is
14 convicted of a crime that they have not committed. So if
15 during my cross-examination of particular witnesses I
16 wasn't a nice guy, I went after these witnesses, don't hold
17 that against my client. It's my job. If I was represent-
18 ing anybody that was close to you or anybody that you cared
19 about, you would want me to do the same thing.

20 You know, it does happen that innocent people
21 get convicted of crimes. And you may say to me, you may
22 say to yourself, "Why is he saying all this to me?"

23 Well, I am saying all this to you for one very
24 important reason. There are going to be sixteen lawyers
25 that are going to sum up plus the government's summation,

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2 so by the time the summations have finished you may long
3 have forgotten what I said. But, you know, that is very
4 important to me and it is very important to my client,
5 Hattie Wars. I want you to try to understand that, try
6 to be a little patient with me and if I repeat things, well,
7 you know why I'm repeating them. I am also asking you to be
8 cautious, I am also asking you to weigh the evidence care-
9 fully and give a lot of consideration to it. Give a lot
10 of consideration to the people that are here on trial.
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Now, what I say, and I think this is going to be repeated many times, is not evidence in this case. Well, it is not evidence in this case because I wasn't at any of the places where the things that were supposed to have happened happened or didn't happen. I, like you, have heard the evidence. But that doesn't mean if I have drawn certain inferences or conclusions that they are incorrect. It does not mean if you agree with me you don't have to adopt these considerations. So I ask you to think about that.

Again, as one of the other lawyers said, this is my one and only opportunity to speak to you. It's my last opportunity to speak to you. Once I sit down I will be very happy. I will tell you why. Because I have worked very hard on this case, but I also will be very sad because I know the prosecution is going to get up and they are going to talk to you and they are going to ask you to draw certain inferences and they are going to say the evidence was this way or it was that way. I won't be able to get up and say, "Well, they are wrong, look at this, look at that." I have to rely on your recollection. That is why I am asking you, consider it. Consider me, consider my client, Mattie Ware.

1 gta
2 There are a couple of basic principles that
3 I want to talk about: presumption of innocence,
4 burden of proof and reasonable doubt.

5 Now, these are not words that I got out in the
6 hallway. These are words that have a long history.
7 I think it was somebody that said he that does not
8 listen to history is a fool.

9 Our system has had a lot of practice with these
10 concepts and they are important and they mean something
11 and just because the issue in this particular case is a
12 controversial issue it does not mean that you forget
13 about these principles, because if you forget about
14 these principles you don't have any protection.

15 Now, a person is presumed innocent and the
16 burden of proof is upon the government and they have
17 to establish my client's guilt beyond a reasonable doubt.
18 His Honor will charge you what reasonable doubt means.
19 I would just like to say it in my own words.

20 If you are approaching a serious matter in your
21 own life or an important matter and before acting on that
22 matter you hesitate because there is a doubt and that
23 doubt is based on reason, then you have a reasonable
24 doubt.

25 There are nine thousand explanations for

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2 reasonable doubt. Actually, I'm talking so I think
3 mine is the best, but that does not necessarily mean that.
4 The judge's is probably better than mine. But that is
5 the gist of it.

6 I will use a very plain example so everybody
7 can be clear about it.

8 Suppose somebody comes to you and they say,
9 "I have a 1974 Chevrolet, and do you want to buy the
10 Chevrolet?"

11 And you say to this person, "Well, how much do
12 you want for the Chevrolet?"

13 And they say, "Well, I'll charge you \$400
14 for a 1974 Chevrolet."

15 Now, right away would you act on this? You
16 might if you were greedy, like Harry Pannirello, but if
17 you were a law-abiding citizen you would say to
18 yourself, "A '74 Chevrolet for \$400? I better hesitate.
19 Maybe this car is stolen, maybe something is wrong."

20 Then add the additional fact of the person
21 that is trying to sell you the Chevrolet has a prior
22 criminal record for stealing, for larceny, for lying.
23 You have a reasonable doubt whether you are going to
24 take this person's word.

25 That's a very simple example. Well, at

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2 least it's as simple as I can make it. That is what I
3 think reasonable doubt is all about.

4 You have to determine reasonable doubt on many
5 different factors. One of the factors is the believ-
6 ability of witnesses. When you see a witness, you
7 observe them, you use your eyes, your senses, but you
8 also get to learn something about that witness, and you
9 have to take his background into consideration.
10 You have to take his motive into consideration. These
11 are all factors that you have to weigh in determining
12 credibility.

13 Reasonable doubt can come about by a lack of
14 evidence and reasonable doubt, as the judge will
15 charge you, and he will talk about, I think, in greater
16 detail, can come about by a person's reputation. If
17 a person has a good reputation in the community, that
18 in and of itself, if you believe it, can raise a reason-
19 able doubt, because we know that if a person has lived
20 a good life and is regarded high in society, the likelihood
21 of that particular person committing a crime is small.
22 And that's a fact that I ask you to take into considera-
23 tion.

Now let me get to the chart. Hattie

Ware, the person that I speak for, is named in one

count. There are, the last time I looked somewhere

between 27 or 28 counts that will go to you ladies and

gentlemen of the jury for you to make decisions on.

Hattie Ware is named in only one count. That count

is the conspiracy count.

Now, you are going to get a lot of explana-

tions as to what a conspiracy is. Basically a

conspiracy is an agreement to commit an unlawful act,

taking certain other safeguards. That is what the

crime of conspiracy is.

Now, you have heard mention of a substantive

act. Well, a substantive act is legal terminology for

saying the crime was actually committed.

Example: Two people plan to rob a bank.

They agree. The agreement is the conspiracy, taking

some additional acts, which are known as overt acts.

They are committed, you have a conspiracy. It doesn't

make a difference whether the actual crime was ever com-

mitted.

Now, the substantive crime is the actual

commission of the robbery. Somebody goes into the

bank, takes money out of the bank. That is the substan-

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2 tive crime.

3 No. 1 -- very interesting here -- Hattie Ware
4 is not charged with selling drugs or possessing drugs
5 with intent to sell drugs or receiving, concealing,
6 facilitating the transportation of a drug that has been
7 imported illegally in the country. She is not charged
8 with that. She is charged with the agreement to do
9 that.

10 Wait a minute. If you listened to Harry
11 Pannirello's testimony and Provitera's testimony, they
12 would lead you to believe that she actually possessed
13 drugs.

14 What does the government do? The govern-
15 ment doesn't charge her with that. They charge her
16 with a conspiracy.

17 You may say, "Well, why is he making a big
18 deal about this conspiracy?" I will tell you why.
19 I have been a prosecutor and I have been a defense attor-
20 ney. Let me tell you right now, conspiracies
21 is the darling of the prosecution. That's the charge,
22 if a prosecutor has got a choice to go on, that's the
23 charge he wants to go on. Why? Because he needs
24 less proof for it. Two, because the rules of evidence,
25 especially in the federal courts, are pretty liberal

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2 as far as the prosecution is concerned. What do I
3 mean by that? Hearsay comes in.

4 Did you hear his Honor taking a great deal
5 of testimony subject to connection? That's a great
6 word, subject to connection. What that means is --
7 his Honor will explain it to you better than I -- a lot
8 of hearsay comes in. Well, why don't I like hearsay
9 as a lawyer and why shouldn't you like hearsay as a
10 lawyer? I will give you an example.

11 A is on the witness stand. A says, "B
12 last week told me that C would be involved in this
13 bank robbery that I am going to commit." I am going to tell you

14 Okay. Look at it very carefully. A
15 is testifying. I get up to cross examine A. I say
16 to A, "Well, how do you know that C is involved in this
17 bank robbery?"

18 He says, "Well, B told me."

19 But B is not in the courthouse. You don't
20 get a chance to look at B. You can't tell if he is
21 lying. You don't even know if B has a criminal record.
22 You don't even know B's motive.

23 Now, suppose what B told A was a complete
24 fabrication and a lie. Do I have any way of proving
25 that? But that is hearsay. It is innuendo.

It gets in there.

You say, "Well, if A is saying it maybe it has some truth to it." It doesn't give me any right of confrontation.

Now, look how simple this whole thing gets. All you have to do is get A to say that B told him something about C, right, and then you put C at particular location with a particular person. It could be innocent conduct. They could be meeting, they could be drinking, they could be at a night club.

Oh, now what A said that B told him makes sense, because the inferences flow that way. But the inferences flow a lot of different ways too. B could be a complete liar. You never saw B. You have no way of testing his truthfulness or veracity.

Using this concept I am sorry to say I feel you could put anybody into a conspiracy. Some countries don't like the law of conspiracy, they don't even have it on the books.

Now, here is something else I would like to point out to you ladies and gentlemen. There are 16 defendants on trial. You think it is an accident that there are 16 defendants on trial at one time? The prosecution made this choice. They are going to put

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16 people on trial at the same time. But doesn't that
lend a little bit to their conspiracy theory, because
maybe we can't prove too much against Hattie Ware but
we can prove a lot about somebody else, right, and then
we will show Hattie Ware knew this somebody else and
then the jury will get all confused and then they will
convict everybody.

But Hattie Ware is an individual. She
didn't come into this world with the 17 other individuals.
And the judge will charge you this, and this is the law,
and I hope you don't forget it. Guilt is personal.
It involves an individual, a human being. Association,
if I know the worst criminal in the world, that doesn't
make my guilty of anything. If I am present when a
crime is being committed that doesn't make me guilty of
anything. But the government wants to use these things
to show certain things.

In order to be guilty of a conspiracy I
have to join that conspiracy and I have to do something
to further its aims. So you take 17 defendants,
you throw in a conspiracy charge, you get a controversial
issue, you get the weight of the United States Government
behind it, and there you have one Miss Hattie Ware all
by herself. She is entitled to a separate trial and

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she could have had a separate trial. The government
elected to prosecute this way.

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2B

2 All right. I think I have said enough about some
3 general principles of law. I would like to talk about the
4 case. What is the government's case against Hattie
5 Ware?

6 Okay. First witness, Harry Pannirello,
7 Harry the Horse. What does he say? He says some time
8 in September or October of 1971 he met Basil at Hattie Ware's
9 apartment, Hattie Ware was present.

10 Does he say that she received anything there?
11 No. Can he describe the apartment to you? No. Is
12 there any other independent witness outside of his brother-
13 in-law, James Provitera, who I will get to, that can ever
14 say that both of them were inside of that apartment?
15 That is what they are going to ask you to believe.

16 Then he says on one occasion he delivered
17 narcotics for Basil to Hattie, but he doesn't know when.
18 Very convenient. He doesn't know when. Again, we are
19 back to his word. Just throw it out. You believe him,
20 okay.

21 Then he says that on four or five different
22 occasions he gave Hattie Ware one hundred or one hundred
23 and fifty dollars for the use of the apartment. Again,
24 he doesn't know when. That's his testimony.

25 What did he say on cross-examination? He

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2 stated he went into the drug business to make money. You
3 remember I showed him a \$20 bill? He said he would do
4 anything for that. No hesitation at all. That gives
5 you insight as to his kind of character.

6 Now, I asked him something that was more
7 important and I am going to read it to you, because I think
8 this shows again the kind of person we are dealing with.
9 I am quoting, Mr. Curran, from page 2436, line 23:

10 "Q Interested in money?

11 "A Right.

12 "Q While you were doing this did you have any
13 remorse?

14 "A Yes, I did.

15 "Q You had remorse?

16 "A Yes.

17 "Q You felt sorry you were doing it?

18 "A Yes.

19 "Q Is that the truth?

20 "A Yes, it is.

21 "Q You are sure that is the truth?

22 "A Positive.

23 "Q If you had so much remorse how come you continued
24 in the narcotic business in 1972, remorse didn't stop you?"

25 Listen to his answer.

1 hp3

2 "A You said it yourself, the almighty buck.

3 "Q That is what you were interested in, the almighty
4 buck, and you will do anything for the almighty buck,
5 right?

6 "A Right."

7 Here is a guy who comes in, knows he is facing --
8 and I will go into that a little later -- a great deal of
9 time. What does he say to you ladies and gentlemen of
10 the jury? "I did it, I sold drugs, I don't have any
11 remorse, I don't feel sorry."

12 Doesn't that give you an insight into the kind
13 of individual we are dealing with, the cool, calculated kind
14 of individual that we are dealing with? He had no hesitation
15 to lie about money. What would he do about jail? If he
16 had to go to jail do you think he would have any remorse,
17 you think he would feel sorry for anybody, you think he
18 wouldn't lie? He used his brother-in-law, he used his
19 father-in-law, he put \$25,000 in a safe-deposit box.
20 Now he wants to use you ladies and gentlemen of the jury,
21 because if you buy his story he will walk out.

22 I asked him about his understanding with the
23 government. Let me read you a little bit about that.
24 2440, line 15, through 2441, line 12:

25 "Q Mr. Pannirello, you have an understanding with

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2 the government, don't you?

3 "A You might say that, yes.

4 "Q The understanding that you have with the govern-
5 ment came about after you were arrested in 1973, right,
6 February of 1973, right?

7 "A Yes.

8 "Q 1970, you didn't run down to the U.S. Attorney's
9 office and say, 'Here I am, Harry, I am ready to be your
10 boy'? Did you say that?

11 "A No."

12 That was his answer.

13 "Q Did you say that in 1971?

14 "A No.

15 "Q You didn't say that in 1972, right?

16 "A Right.

17 "Q 1973 you said it?

18 "A Yes.

19 "Q After you were arrested?

20 "A Yes.

21 "Q 1970, 1971, 1972, you were too interested in
22 making a buck to be a cooperating individual, right?

23 "A Right."

24 You don't have to take my word for it. It's in
25 the record. That is what he said. It came out of his

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2 mouth.

3 After he was arrested he participated in three
4 direct deals with an undercover agent, Mr. Logan, and you
5 saw Mr. Logan here. After he knew they had the tightest
6 case in the world against him and after he knew he was
7 facing 60 years on that charge he decided to cooperate.

8 He admitted on cross-examination that he would
9 lie to the agent in order to make money. You remember when
10 I asked him, "Did you tell the drug agent, the undercover
11 agent, how to run the drug business," he said, "Yes, I told
12 him that."

13 "You remember you told him you were in the
14 business for ten years?"

15 "Yes, I told him that. That was a lie. I did
16 that because I wanted to make money. I lied and I cheated."

17 Now, it's obvious, very obvious, that Mr. Panni-
18 rello has made a deal with the government. He spent six
19 days in jail. He was originally facing sixty years in
20 the court in Newark, New Jersey. He only pled guilty to
21 two of those counts.

22 Here is something very interesting also. What
23 he was caught on goes back to February, 1973. He pled
24 guilty in June of 1973. He hasn't been sentenced yet.
25 It is now 1974, going into March. Does that sound usual

1 hp6

2 to you? He is waiting for Mr. Phillips to go to Newark
3 and, like he stood up when I cross-examined him, tell the
4 judge there what he did and what he said.

5 Is he named as a defendant in this case? Do
6 you see him sitting at the table? Is he subject to that
7 additional penalty? Has he pled guilty to one count in
8 this case?

9 What about all the money he earned in the
10 narcotic business? He is not worried about that. There
11 is going to be no income tax evasion prosecution. He said it.
12 I will show it to you. 2454, line 3, through line 8:

13 "Q You haven't been prosecuted for income tax
14 evasion yet, right?

15 "A No.

16 "Q So all the money you were interested in at that
17 time, you know, it's perfectly safe, right?

18 "A Yes."

19 That was his answer. Not my words, his words.
20 You don't think he has worked out a deal for himself?

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3A

2 He testified to over 20 transactions. He is
3 facing over 300 years if the government decides to prosecute
4 him. He doesn't expect to go to jail for one day. The
5 government wants you to take his word.

6 You remember what Mr. Phillips said in his
7 opening statement? Would you invite these people to
8 dinner? Would you buy a car from this guy? Would you
9 buy a Chevy from this guy? Would you use him as a bank
10 reference?

11 Imagine going to a bank and saying, "Well, here
12 is my friend, Mr. Harry Pannirello, he was in the drug busi-
13 ness. He lied, he cheated, he has no remorse. But I want
14 you to loan me some money on his name."

15 The government says, "Believe him. Send Hattie
16 Ware to jail."

17 That's what they say. There is no doubt about
18 that.

19 What does he want to do? He wants to walk on
20 her body out into the sunshine and I'm supposed to be a nice
21 guy about it. You just can't believe somebody like that.

22 I know the government is going to come in here
23 and they are going to say, "Well, look, I wish we had a
24 rabbi, a priest, a minister to put on the stand, then you
25 would believe them, right? We have to use this person."

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2 But this is not the issue. The issue is they
3 want you to believe this person and they want you to
4 believe him beyond a reasonable doubt.

5 Now, the only other witness, live witness, was
6 Mr. James Provitera. Mr. Provitera, like Mr. Pannirello,
7 testified as to certain transactions in which he says Hattie
8 Ware was involved. He says he went up to the apartment,
9 that there were neighbors there and at one time Basil wasn't
10 there and he left a package with her for Basil. That was
11 part of his testimony.

12 Of course, when I asked him on cross-examination,
13 "Mr. Provitera, do you know what these neighbors were
14 talking about? Who else was present?"

15 No, he didn't know. He was there for 15 minutes.
16 Just his word now, no independent corroboration.

17 Then there was some testimony about him being
18 there with Pat Dilacio, who conveniently is not in this
19 court, either, who conveniently has not been called as a
20 witness for the government, and he said Dilacio gave her a
21 package, told her to bring it down to Al Greene on the 7th
22 floor and give her some money for that. That is Provitera's
23 testimony.

24 How ridiculous. If they want to make a delivery
25 to Al Greene on the 7th floor, why are they going up to the

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2 11th floor for?

3 Mr. Provitera is a very funny guy on the witness
4 stand. You know, he was very funny with, you know, his
5 story about talking to Mr. Phillips on the way to the bath-
6 room and his mackerels and so forth and so on. But you
7 have to look at what this guy did.

8 Agent Logan testified about Provitera, independent
9 witness. Agent Logan said he delivered drugs to him in
10 Ridgely Park, New Jersey. And you see those Govern-
11 ment's Exhibits 64-B and C in evidence, they were handed
12 to the agent by Mr. Provitera. He wasn't so funny then,
13 he was acting under the direction of Harry Pannirello.
14 That's what he did and he did it for the same reasons.

15 You know, he comes on as being dumb. Maybe
16 that's the impression he wants to give you. But he wasn't
17 so dumb that time. He was in it to make money. He saw
18 his brother-in-law Harry Pannirello was making money, so
19 he wanted to get part of the action. And believe me, if
20 he was in it with Harry Pannirello to make money, he's in
21 it with Harry Pannirello to lie, because their deal is the
22 same.

23 What did he say about being remorseful? Let me
24 read it to you.

25 Page 3117. These are the words that are in

1 tp4

2 the record, they are not my words.

3 "Q But you wanted a piece of the action?

4 "A Right.

5 "Q And the way you are answering today, straight-
6 forward, you went straightforward into the narcotics busi-
7 ness, right?

8 "A Right.

9 "Q No hesitation, right?

10 "A Right.

11 "Q You weren't worried about who you were going to
12 hurt, right?

13 "A Right.

14 "Q And while you were dealing in narcotics in 1972,
15 did you have any remorse?

16 "A No.

17 "Q No remorse, right? You would have done anything,
18 right?

19 "A I wouldn't say anything.

20 "Q Well, almost anything, right?

21 "A I couldn't answer that. If you give me a specif-
22 ic --"

23 Then I went on with him and he said that he was
24 only a delivery boy, but if they made him a partner he
25 would deliver drugs and he was interested in making money.

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2 No remorse. He is not even remorseful today. Do you
3 think he is worried about the sentence he is going to get?
4 You don't think he has worked out a deal with the govern-
5 ment? If he didn't, would he stand up there and say he
6 didn't have any remorse?

7 What did he say when he was in action, out in
8 the street, not dressed in a shirt and tie before you
9 ladies and gentlemen who he is trying to impress? He
10 talked to the agent on one occasion, he delivered one
11 pound of heroin. Do you know what he said to the agent?
12 "We are going to start rolling Saturday night."

13 Oh, he denied it when I asked him. I confronted
14 him with Agent Logan's report and he hammed and he hawed,
15 but it was in there.

16 Then the testimony about the price list. I said,
17 "Didn't you give the agent a price list that Harry Panni-
18 rello had given you?"

19 "Oh, no, I never did that. Oh, I don't recall."

20 But do you remember Agent Logan? I anticipated
21 Provitera. I asked Logan that question and if you look
22 in the record you will find it, "Were you given a price
23 list?"

24 He said, "Yes."

25 "Who gave you the price list?"

1 tp6

2 "James Provitera."

3 This in an out-and-out lie and he told it to you,
4 ladies and gentlemen of the jury. This is the man the
5 government wants you to believe.

6 He testified about 11 transactions to narcotics,
7 225 years. Do you know what this guy would do for 225
8 years? That sentence is still open. He pled guilty in
9 June of '73, he hasn't been sentenced yet.

10 Pannirello, Provitera, they are the same package.
11 One may look better than the other, but it still comes out
12 the same. No prosecution for income tax evasion.

13 By the way, some interesting testimony came out.
14 I think it was during direct. He is now vice-president of
15 the caulking corporation that he is in charge of, Mr.
16 Provitera. Where do you think he got the money for that?
17 Where do you think he got the money to expand?

18 Would you bring him home to dinner? Would you
19 bring Provitera home to dinner, Pannirello?

20 I tell you one thing, if you brought those two
21 guys home for dinner, you better lock up your silverware.

22 Now, see, what makes it very difficult for a
23 liar is that these kind of people don't wear T-shirts,
24 they don't walk around saying, "I am a swindler, I am a
25 liar," because if they did it would be easy. That's what

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1 tp7

2 they are asking you to believe. That's what they are saying,
3 "Well, we have proved somebody's guilt beyond a reasonable
4 doubt."

5 Their records, their acts speak for themselves.
6 You just can't believe them.

7 Now, the government has introduced some other
8 very interesting evidence. The evidence consists of
9 photographs at a nightclub in which Hattie Ware was there,
10 Basil and Estelle Hanson were there, and these were photo-
11 graphs that were taken at the Copacabana Nightclub. That
12 was testified by my witness, by the way, Patricia Williams.
13 She was there on that night. She is registered nurse 10
14 years. You watched her. Stack her up against Harry
15 Pannirello or James Provitera.

16 Okay, they have these pictures and they have
17 Miss Hattie Ware in a mini-skirt and they have a fellow's
18 arm around her and her niece's shoulder. What does that
19 prove?

20 I mean, you don't think that those pictures are
21 introduced for one reason and one reason only, to prejudice
22 you? You mean because you have a picture taken with some -
23 body in a nightclub that makes you guilty of a conspiracy?
24 That is the value of those pictures. And my witness identi-
25 fied them, said what it was all about.

tp8

Patricia Williams said what the occasion was.
It was her birthday. She said they were all having a
good time that night.

If you want to convict my client because she
wore a mini-skirt on a certain night, I don't think that is
good evidence.

gtal

Here is something else. The government has some more evidence, more interesting evidence. There was an apartment leased at 150 West 225th Street. I stipulated that Hattie Ware's signature was on that lease. Okay. She leased the apartment. But here is something very interesting also. The government stipulated that the money orders with respect to the payment of the rent were not in her signature.

What are the inferences that you can draw? You can draw a lot of inferences from that. Does that mean somebody is guilty of a conspiracy?

Did they say any of her clothes were found there? Did they bring anybody in to say she actually lived there? If I help somebody lease an apartment, that makes me guilty of a crime?

Now, this is circumstantial evidence and what the government is going to try to show is that by all this circumstantial evidence they have proved Hattie Ware's guilt beyond a reasonable doubt.

The classic example that they give of circumstantial evidence -- I think the judge may or may not give it -- is: suppose you come in here in the morning and the sun is out and then we draw all the windows and all the shades down and you are sitting here

1 gta2

2 for a couple of hours and somebody comes up here and
3 he has a raincoat on and there is rain coming down the
4 raincoat and a couple of minutes later somebody else
5 comes in with an umbrella and you see that the umbrella
6 is wet. Circumstantial evidence says from that you
7 can infer that it is raining outside.

8 That is great. But we are dealing with
9 a person's life, we are not dealing with raindrops.
10 The circumstantial evidence that they have produced
11 is not as conclusive as that example. Circumstan-
12 tial evidence is fine, but it has to be conclusive.

13 I know it is getting late but I want to tell
14 you one little story about circumstantial evidence.

15 This guy, he got on the train one day --
16 I read this story in the Times -- he got on the train
17 and he was riding toward work and he got on the train
18 and it was a very crowded train and there was a young
19 boy sitting next to him or standing next to him. He
20 had long hair, looked a little shabbily, had sneakers
21 on.

22 While the train was going this young boy brushed
23 against this man. As he brushed against this man
24 the man felt inside his jacket pocket and he said, "Oh,
25 my God, my wallet is missing."

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So he went to grab the young boy because the young boy got up at the next stop and he grabbed his hand and the train was rolling along and he wasn't going to get go of this boy because he thought the kid had his wallet. Except for the fact he would have been seriously injured, he let go of the kid's hand.

He got back to the office, he sat down, he said, "My credit cards are missing, my driver's license is missing." He went completely crazy. He cursed the kid.

About 45 minutes later his wife called up and she said, "You know, your wallet fell out of your jacket and I found it in the bedroom."

That is circumstantial evidence. If his wife never called up, they arrested that kid, they have circumstantial evidence of a theft. So be very careful, because there are a lot of inferences that can be drawn. And who is here to say that it might be a horrible mistake as far as my client Hattie Ware is concerned.

Now, Hattie Ware, when she was arraigned on this charge said, "I'm not guilty." When she did that she proclaimed to the world that she was innocent and she has been sitting here for seven, eight weeks and

1 gta4

2 you have had a chance to observe her and she has been
3 going through agony.

4 What do you know about Hattie Ware? Well,
5 Patricia Williams said something about her. She said
6 she knew Hattie Ware for six years, that Hattie Ware
7 now works for the president of Federal Carver Savings
8 Bank and that she has an adopted child and she has an
9 excellent reputation in the community, and that community
10 is 1330 University Avenue.

11 You remember when I put my first character
12 witness on, Mr. Livingston Wingate, Mr. William Phillips
13 got up and he objected and he said, "Well, he does not
14 live in the community."

15 Well, my second witness did live in the
16 community. She said she discussed her reputation
17 in the community and the community said she had an
18 excellent reputation for truthfulness, for being a law-
19 abiding citizen.

20 I asked her, "Did you discuss her reputation
21 even after this happened?"

22 And what did she say? She still has the
23 same reputation. This must be some horrible mistake.

24 You saw Patricia Williams testify and you
25 can draw your own conclusions.

gta5

Now we come to my final witness, Mr. Livingston Wingate. He said he was an attorney for 25 years, he says he was the executive director of the Urban League, former president of the Board of Education. He told you about the Urban League, told you what it did and how it helped housing, health, education, unemployment, how it sponsored this annual football game, the Whitney M. Young Memorial Football Game, told you how Hattie Ware worked for the Urban League as an administrative assistant to the controller, as an administrative assistant to the deputy executive director, as administrative assistant to the program director for the New York Urban League, that she handled large sums of money, that she is completely trustworthy and she has an excellent reputation for truth and being a law-abiding citizen.

And even after they heard of the case what did Mr. Livingston say about Hattie Ware? I will read it to you out of his words.

Page 4233, line 18:

"Did you discuss her reputation with anybody else other than the people at the Urban League?

"A Yes. The case was fairly widely discussed among the people who knew Miss Ware, the

1 gta6

2 business men in the community, the banks that we dealt
3 with, that she dealt with and I dealt with."

4 "And what was their opinion after you
5 discussed that with them?

6 "A Well, it was one of shock and surprise
7 that Miss Ware -- Miss Ware worked in a bank after leav-
8 ing the League and it was shock and surprised. I would
9 be questioned about my attitude about the matter and they
10 would express theirs.

11 "The Court: Mr. Wingate, hold on. We
12 can't take your feelings.

13 "Q What was their feelings about the
14 matter?

15 "Mr. Phillips: Objection, your Honor.

16 "Mr. Panzer: I think Mr. Phillips opened
17 the door on this, your Honor.

18 "The Court: I will permit it. Don't
19 argue.

20 "Q What were their feelings on the matter?

21 "A Their feeling was one of surprise that
22 she would be involved in this kind of matter because it
23 was inconsistent with her reputation as they knew her."

24 I ask you one thing, is a man like Living-
25 ston Wingate going to come over here and testify for

1 gta7

2 Hattie Ware if he had any inkling of a doubt that she
3 was guilty of these charges?

4 I ask you to think of this. Stack up her
5 witnesses, Patricia Williams, Livingston Wingate, against
6 the two snakes, Harry Pannirello and James Provitera.
7 I think your verdict will be not guilty.

8 Thank you very much.

9 THE COURT: All right, ladies and gentlemen.

10 (The jury left the courtroom.)

11 THE COURT: Gentlemen, I realize that in
12 summing up you have to refer to the law, but leave
13 something for me to charge on. All right?

14 (Recess.)

(Recess.)

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(In open court; jury not present.)

THE COURT: Gentlemen, let me warn you again. Please stay within the evidence in this case.

Mr. King, are you ready?

MR. KING: Yes, sir.

THE COURT: All right. Bring back the jury, please.

MR. LEIGHTON: Judge Duffy, do you feel that there will be another summation after Mr. King?

THE COURT: I don't know. How long is Mr. King going to be? You mean today.

MR. LEIGHTON: Today.

THE COURT: I assume that there are going to be other summations.

I don't know. How long do you expect to be, Mr. King?

MR. KING: The way it looks, about an hour, Judge, but one can never tell. If I get finished before an hour you will love me and if I go over that you will forgive me.

(Jury present.)

THE COURT: All right, Mr. King.

MR. KING: May it please your Honor, Madam

1 jha2

2 Forelady, counsel for the defense, counsel for the govern-
3 ment, ladies and gentlemen of the jury:

4 Because I know that the ultimate fate of
5 my client rests in your hands I am extremely anxious that
6 no extraneous matter enter into my summation and before
7 I start it you will forgive me if I go into something
8 personal.

9 By now you all know that I have a hearing
10 impairment and there have been frequent occasions when
11 people have said to me, with some irritation, "Well,
12 why don't you wear a hearing aid," and so it seems to me
13 that you folks might have had the same idea. Well,
14 I want to tell you that I do wear one and have been
15 wearing one for the past 22 years. They are invisible, in
16 case you haven't seen them.

17 I felt that you should know that because I
18 have as recently as a week ago had the same question
19 from Mr. Pollak, who sits right alongside me. He
20 said to me, "Why don't you wear a hearing aid?" I
21 wanted to make sure that you knew this and you didn't feel
22 that I was coming in here and wasting everybody's time
23 and thinking, "Well, why don't he wear an aid if he can't
24 hear."

25 You might also have observed that I cup my

ear frequently. I should tell you that a hearing aid is not like a pair of eyeglasses. You put on a pair of eyeglasses and your astigmatism immediately comes into focus, you get an almost 20/20 vision. When you put on a hearing aid all it does is magnify sound. It doesn't help the hearer to discriminate. And so in order to help myself I cup my ear.

Now, I don't tell you all this to evoke your sympathy. There are 20 million other people hard of hearing in this country. So there is nothing unusual about me, excepting I felt that you ought to know it in all fairness so that any possible resentment you have should not spill over to my client, which would be grossly unfair.

Speaking of my client, you all witnessed the unfortunate outburst and on his behalf I ask your forgiveness and apologize for him. But you should understand that the strain and the tension of sitting here day in and day out can be too much for some people. I am sure that you all know that Mr. Gamba is not being tried here for his temperament or for his outbursts. He is being tried here for what he is charged with in the indictment, and that, in all fairness, is what you should keep in mind.

Now, you have all undoubtedly noticed that on several occasions one defense counsel might be questioning a witness or making a statement to the court or perhaps trying to offer evidence and several other defense attorneys will be quick to object to it, or vice versa, they will support him in what he is trying to do.

Now, the reason I tell you that is to impress you, if you have not already observed it, that each of the 18 defendants here is being represented by his own counsel and you must bear in mind that when you go into that jury room and deliberate and consider the guilt or innocence of each of the defendants that they should not all be tarred by the same brush.

Each of you must remember that you have got to render separate and distinct verdicts for each of the defendants and it must be based upon the evidence you heard, the evidence shown to you, and the law as his Honor will charge you.

Now, the one common count on which all the defendants have been indicted is conspiracy. It will be your office and only your office, as well as your duty, to decide which defendant if, indeed, any of them have entered into this conspiracy.

jha5

Now, if I fail to refer to any evidence offered as to any defendant except as to Mr. Gamba this is no indication of my opinion as to the respective guilt or innocence of any of the other defendants. My duty here is to defend John Gamba and, of course, I will exert my best efforts towards that end.

Let's review the testimony of the government witnesses and the evidence offered by the government as it affects my client, John Gamba. I brought with me the verbatim testimony in so far as it affects my case and I am going to do my best to stick to that verbatim testimony, appreciating the frailty of human memory.

We come first to, as I recall it, -rimrose Cadman. That was the girl who by her own admission stole hundreds of dollars worth of clothes from fashionable stores and sold them for narcotics for herself and the man she was living with and perhaps even supporting. But did any of you even hear her utter the name of John Gamba or Sinatra? Definitely not.

1 hpl
2 We then heard from one of the government's chief
3 witnesses, Frank Stasi, the man who admitted that he was
4 to be given his freedom, a new identity and an airplane
5 ticket in addition to the cash he would receive, provided --
6 repeat, provided -- his testimony brought favorable results
7 to the government. Now, he was on the stand several
8 days. Did you hear him even mention the name of John Gamba
9 or Sinatra? Again, the answer must be no.

10 The next oracle of truth offered by the govern-
11 ment was John Barnaba. He admitted that he had told Mr.
12 Rogers, the chief supervisor in charge of narcotics prosecu-
13 tion, "You want a guy in I'll work that guy in." That
14 is found on page 1627.

15 And again, "I'll do anything you want me to do,"
16 and that is found on page 1628. All these numbers refer
17 to the transcript of the trial.

18 He further admitted that Mr. Rogers had stated
19 that he, Mr. Rogers, "would have an awful lot to say about
20 the charge that could be brought against Barnaba, namely,
21 a 50-year sentence." There were some here who thought
22 that it was 50 to life, but taking Barnaba at his word,
23 who said, "I remember the 50 years but I don't remember the
24 life," at least he did admit 50 years, and I needn't impress
25 the fact that 50 years for a man of Barnaba's age was a

1 hp2

2 life sentence. That is found on page 1626.

3 Now, there are many contemptuous characteriza-
4 tions that I could apply to this wretched creature. His
5 demeanor on the stand, which you must have observed, did
6 nothing to enhance him as a man. But I will refrain from
7 going into all that. He is really to be pitied, a whimpering,
8 panic-stricken cur, terrified at the long stretch in prison
9 he faced if he didn't cooperate. But even this low character
10 in no way implicated Mr. Gamba, in no way.

11 You will recall that I showed him Government's
12 Exhibit 3549, which was his own handwritten 32-page document
13 in which he mentioned dozens of names, but not once did the
14 name of John Gamba appear.

15 He was asked whether he had had any narcotic
16 transactions with Mr. Gamba and he answered, and here he
17 tried a bit of hanky-panky. Remember, this man had
18 promised to produce and he was being a little careful
19 towards the end in the way he was answering me. On page
20 1551, line 17:

21 "Q Let me ask you, Mr. Barnaba, whether you at any
22 time prior to your arrest or after, when you were cooperat-
23 ing with the government, had any kind of narcotic trans-
24 actions with John Gamba whatsoever.

25 "A I personally, myself personally?"

1 hp3

2 Now, there was the beginning of the wheels turn-
3 ing. How should he answer this question? Would he redound
4 to his detriment, would it benefit him? How should he
5 answer this? This is definitely the rejoinder of a liar.
6 He went on to say:

7 "I don't understand the question.

8 "Q I will repeat it. At any time can you recall
9 having had any narcotic transaction with John Gamba?

10 "A I, myself, you mean myself personally?

11 "The Court: Yes, you personally."

12 Then I said, "Yes, yourself, only yourself."

13 Finally he said, "No, sir."

14 Finally rung it out of him.

15 On direct Mr. Barnaba was asked in a rather oblique
16 way about his dealings with Mr. Gamba, but I think the
17 question concerned itself with Mr. Gamba being a stash,
18 to which Mr. Barnaba answered, "I don't even know the man."
19 And that is found on 1460 and 61.

20 Another witness produced by the government was
21 Mr. Dawson, a very clever man, very clever. I won't dwell
22 on him at all because there is no doubt in anyone's mind
23 that he didn't even touch the name of John Gamba.

24 We then come to Agent Logan. If I am taking
25 these names out of order don't mind, it really doesn't matter.

1 hp4

2 Mr. Logan denied on my questioning him ever having even
3 seen Mr. Gamba. And that is found on pages 2869 and 70.

4 We come now to the only two witnesses who
5 actually testified against Mr. Gamba. Let's take Harry
6 Pannirello first.

7 He stated that he had been interviewed by Agent
8 Nolan over a period of some six to seven weeks encompassing
9 12 to 18 hours. That is found on page 2396.

10 After some questions I recall asking him whether
11 had decided to inform because it would be an act of civic
12 virtue. He didn't understand that, and I asked him if
13 he thought that he ought to inform because that is what a
14 good citizen should do. He said, "That and other reasons."

15 Now, as an attorney I can tell you that I took
16 a chance in asking him what the other reasons were. It
17 could have been a boomerang. But looking at the man,
18 watching his actions, his demeanor, there could be no
19 doubt in my mind, one, that he was a capital liar, and
20 two, vindictiveness screamed out from him, and I knew that
21 he was going to answer something to that effect. He even
22 said, among the other reasons, "My main reason" -- I
23 repeat -- "main reason was because everyone turned their
24 backs on me. And that is found on page 2396.

25 Now, you people are not 16-year-olds. You
have been around and you have had experiences of your own

1 hp5

2 and you know how dangerous people can be when they are
3 vindictive. They will stop at nothing. Vindictiveness
4 is the seed of all evil. And here was a man who freely
5 admitted the fact, "Yes, that's why I did it, because they
6 turned their backs on me."

7 He was then asked, "Well, did Gamba turn his
8 back on you?"

9 He said, "Gamba? I didn't even see him."

10 Then why did he implicate Gamba? Because,
11 ladies and gentlemen, the ugly fact is that the more he could
12 draw into his dragnet the higher marks he would get in the
13 prosecutor's office.

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When he said, "Because everybody turned his back on me," I said, "And so you decided to get even on him," meaning the defendants, and he answered, "Yes, exactly."

I am not going to burden you with the rest of the questions I asked this crafty, evasive person and the answers he gave, liberally peppered with "I don't remember," that phrase which is the haven of all liars, "I don't remember."

If you get cornered, "I don't remember." You can remember everything else that is important and that will help you, but when it comes to something embarrassing, "I don't remember."

I do want to dwell on one other answer Mr. Pannirello made to me. He had stated that he paid Mr. Gamba \$300 a week for stashing the goods even when there were no goods to be stashed.

I want to state parenthetically here that I trust his Honor will charge you that since the indictment and bill of particulars offered by the government states that no money was exchanged, that the statement made by Pannirello that he gave money to my client must be totally disregarded and stricken from your minds. But the point I want to bring out in this connection is that I asked him if it weren't the fact that his brother John or Johnny,

1 tp2

2 as he was known, wasn't his leg man, his errand boy making
3 deliveries, making pick-ups, running around, doing his dirty
4 work for him, and Johnny, he admitted, got \$250 a week for
5 doing all this work, whereas if you accept the word of
6 that liar he was paying another man \$300 for the passive
7 job of allegedly keeping goods in his house, doing nothing
8 else. Does that sound true to you? Does that make sense?
9 Can you believe that?

10 As well as I could hear, Mr. Panzer anticipated
11 some of the remarks that I have noted here and I am going
12 to try not to repeat them because I certainly don't want
13 to bore you, and if I do please forgive me. It means that
14 I didn't hear him.

15 Mr. Panzer adverted to the question he had
16 asked Mr. Pannirello about his remorse and you recall the
17 answer he gave, and I needn't repeat it.

18 Now we come to that smart alec Mr. Provitera,
19 the century's leading comedian. Here was a real avaricious
20 person who testified that he had been earning legitimately
21 \$225 a week, he had a wife and son and he was paying only
22 \$140 a month rent. That is found on page 3056.

23 Now, I don't say that he could go out and ride
24 in a Rolls-Royce with that, but that was a comfortable sum
25 to make when figured against his expenses. But that wasn't

1 tp3

2 enough for him, he needed the money he could earn through
3 the dirty game of narcotics.

4 Now, he had testified -- stated, I should say,
5 to Agent Nolan that at the most he had been in Mr.
6 Gamba's home twice. On the trial he testified that he had
7 been there four times. I questioned him on that. I showed
8 him the statements he had made and which had been reduced to
9 typewritten form and he wasn't shaken at all. He wasn't
10 embarrassed.

11 I asked him if he thought his memory now was
12 better than it was when he had talked to Agent Nolan,
13 which was just a matter of a few months after his arrest,
14 and brazenly said, "Yes, my recollection now is better than
15 it was then."

16 This was a real cool customer. And he sat there
17 and he felt that if he could get the jury to laugh at his
18 alleged humor, he was in.

19 This man was utterly without a heart. This
20 man is a totally unregenerate creature. There is no
21 doubt in my mind that the first opportunity he gets to
22 violate the law in any degree he will do so, because he
23 has learned that if he is caught all he has to do is
24 become a squealer and catch as many people as he can in his
25 net, get them jailed, and he goes off scot-free.

1 tp4

2 Look at Barnaba. He had a record as long as my
3 arm, and what does he face? A possible four-year sentence
4 because of this, what is euphemistically termed, cooperation
5 with the government.

6 Why shouldn't they do it if they know in advance
7 what they are going to get away with?

8 You will recall that I asked Mr. Provitera whether,
9 in fact, he had ever looked at any of the packages he picked
10 up from Mr. Gamba, allegedly picked up from Mr. Gamba.
11 He shilly-shallied about that, and I said, "Specifically
12 I am asking you about the packages you picked up from Mr.
13 Gamba," and he said, "Specifically, I don't remember."

14 I said, "He could have slipped you a mackerel
15 and you wouldn't have known it?"

16 And he was not to be outdone and he said, "I
17 would have smelled it," a real funny guy.

18 He also knew that he had to produce, so he not
19 only lied about or showed a great discrepancy between the
20 time of times he had told Mr. Nolan he was in Mr. Gamba's
21 house and what he said here at the trial. He really
22 wanted to shove it in so he invented the story about being
23 present at Mr. Gamba's house while heroin was being mixed.

24 Now, you would think an important thing like
25 that, since he was in fact, to use the vernacular, spilling

1 tp5

2 his guts to Agent Nolan, he would have told Mr. Nolan some-
3 thing as important as that, "I was at the house and I saw
4 them mixing heroin."

5 Agent Nolan himself, on page 3443, was asked the
6 following questions and he gave the following answers:

7 "Q How many interviews did you conduct with him,"
8 meaning Mr. Provitera.

9 "A They were numerous. I wouldn't be able to give
10 you an approximation. For the sake of argument, maybe 20.

11 "Q At least one of those was recorded on tape,
12 a rather lengthy one, is that correct?

13 "A That's correct.

14 "Q In that interview that was recorded on tape or
15 any of the other interviews you had with the witness Provitera,
16 did he ever tell you that he was present at a session at
17 which narcotics were being cut or mixed and at which John
18 Gamba was present?

19 "A To the best of my knowledge, no."

20 Now, that comes from a government agent, not my
21 witness.

1 qta1

2 Provitera, ladies and gentlemen, was easily the
3 smartest and slickest witness that the government pro-
4 duced. His answers portray a kind of satanic cunning,
5 a craftiness. He was never at a loss for an answer.
6

7 Now, when a witness is on the stand he is
8 trying to tell the truth, he is not glib, he is not fast
9 with his answers. There will be some split second, at
10 least, of hesitation before he answers because he is
11 seeking, he is searching his memory for what the truth
12 is.

13 But James Provitera had the answer out almost
14 before the question was finished. He did his homework
15 diligently and he portrayed no embarrassment
16 in being shown various and numerous contradictions in
17 his testimony. He had, ladies and gentlemen, a
18 high intelligence and low morals.

19 And this is the sad fact, it was obvious that
20 he couldn't care less as to whom he was placing in jeopardy
21 with his monstrous lies. He was shot through with a
22 streak of real viciousness. All that matters to Pro-
23 vitera was James Provitera.

24 The prosecution will undoubtedly make the
25 apologia that without informers it could not successfully
attempt to prosecute defendants. I hope you reject

1 gta2

2 that appeal for the following reasons:

3 It is a sad commentary on our law enforcement
4 agencies. It means, in effect, the only way the
5 government can apprehend a criminal is through squealers
6 and stoolpigeons. It means that the law enforcement arm
7 of our government has broken down and is inadequate for
8 the job.

9 If the only way criminals can be caught is through
10 informers who testify in most instances to buy their
11 freedom by sacrificing their erstwhile friends and
12 buddies, why have a police force?

13 Judas Iscariot sold Christ down the river for
14 30 pieces of silver and he has been the prime example in
15 the last two milenia of perfidy and betrayal. But the
16 government witnesses here were shooting for much higher
17 stakes than 30 pieces of silver, they were seeking to
18 escape possibly, 30, 50, yes, even life sentences. The
19 temptation to lie under such circumstances are extremely
20 hard to resist.

21 To give you an example of Provitera's flippancy
22 and his utter callousness, I recall that he was asked
23 at one point, "Well, did you tell the jury that yester-
24 day?"

25 And he answered quickly, "Well, the jury

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2 didn't ask me."

3 Now, what kind of an answer was that for a man
4 to make? He of all people knew that the jury asks no
5 questions, it is the lawyers and the judge who do.

6 If this is the way the government hopes to
7 obtain convictions here, then all I can say is God
8 have mercy on us all.

9 I want to add one thing. Both Pannirello
10 and Provitera agreed to cooperate with the prosecution in
11 June or July of 1973, about five or six months before
12 Mr. Garba was arrested. You have heard testimony
13 here from various prosecution witnesses who were wearing
14 a listening device in an effort to capture some incriminating
15 statements from some of the defendants.

16 Now, in this five-month interval, if the
17 government had any kind of a case against Garba as it
18 claims to have, why didn't they do it with him? Why
19 didn't they attach a hearing device to either Provitera
20 or Pannirello, who claimed to have had visiting privileges
21 with Garba and have him go there. They could
22 have gotten him cold. There was nothing like that
23 here.

24 More important than that, Garba is charged
25 with having possessed three kilos of heroin. When he

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2 was arrested there is nothing in the record here to
3 show that either he or his house was searched. That
4 strikes me as exceedingly odd.

5 Ladies and gentlemen, this is the last
6 opportunity I shall have to address you. Under the
7 procedure that obtains in criminal trials the prosecution
8 has the option of opening -- not the option, but the
9 right to open and to close. They make the opening
10 speech and the closing summation. No matter how damag-
11 ing their remarks may be about what I have said, I do
12 not have the right to get up and answer. When I sit
13 down I have finished, so you should know that and not
14 believe that because I don't get up to answer or to
15 reply to what they say it means that I am accepting it
16 or agreeing with it.

17 I want to thank you for the attention that you
18 gave me.

19 THE COURT: All right. As I indicated
20 before, ladies and gentlemen, we will take a break after
21 each and every summation.

22 Mr. Marshal, will you take the jury out.

23 (The jury left the courtroom.)

24 THE COURT: Mr. Leighton, how long do you
25 figure you will be?

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2 MR. LEIGHTON: Approximately 30 or 40 minutes,
3 Judge. I will try to adhere to that this time.

4 THE COURT: All right. I will be back
5 here in five minutes. Mr. Leighton is going to
6 start at that point. I would think it only appro-
7 priate that you fellows be back here too instead of
8 walking in after he started.

9 MR. SUNDEN: Judge, one point. I noticed
10 that Agent Nolan is in the courtroom. Perhaps it is
11 just my very strong personal feelings about this, but he
12 was a witness and his credibility is to be determined.

13 I noticed one of the jurors was looking in his
14 direction during Mr. King's summation and at one point
15 Mr. King was talking about something regarding the debrief-
16 ing in which Agent Nolan was involved, I think Agent
17 Nolan, voluntarily or involuntarily, was making some
18 facial expression which may have given some indication of
19 his feeling about it.

20 I think a witness whose credibility is one of
21 the facets of the government's case just should not be in
22 the courtroom so the jury should n't hear that or
23 or establish that contact or anything like that.

24 THE COURT: I disagree with you.

25 MR. SUNDEN: Exception.

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(Recess.)

(In open court; jury not present.)

THE COURT: Gentlemen, just a word of caution.

Stay with the record of this trial. Remember that

there is such a thing as so-called fair reply. A

word of warning should be sufficient.

All right. Bring back the jury.

MRS. ROSNER: Your Honor, Mr. Sunden has

been called out of the courtroom and I will be covering

for him for the rest of the afternoon.

THE COURT: All right, fine.

(Jury present.)

THE COURT: Mr. Leighton.

MR. LEIGHTON: If it may please the court,

counsel for the prosecution, defense counsel, Madam Fore-

lady and ladies and gentlemen of the jury:

As you know, my name is Robert Leighton. I

am the attorney for Warren Robinson. He is the gentle-

man sitting next to Miss Hattie Ware. He has been

seated behind me the entire trial.

Let me take this opportunity on behalf of my-

self and Mr. Robinson to thank each and every one of

you for sitting here as jurors, giving of your time,

sacrifices that you have made in your own personal

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2 lives to give Mr. Robinson his day in court.

3 Now, as an attorney I have tried many cases.
4 I have sat here for seven weeks and you observed the
5 lawyers, the lawyers in turn observed you. I want to
6 thank each and every one of you for sitting here, being
7 patient, listening to the evidence, watching the witnesses,
8 listening carefully, looking at the exhibits as they
9 were passed amongst you, and not just taking it, looking
10 at it and passing it to the next juror. We noticed, I
11 noticed, each and every one of you made a careful look,
12 you examined each document. I think as a juror, when
13 you swear and take the oath as a juror, this is your
14 sworn responsibility, your sworn duty to give a
15 defendant, in this case, Warren Robinson, a fair and
16 just trial. I think each and every one of you should
17 be proud that you have conducted yourself as jurors
18 should.

19 As an attorney in this case who sat here for
20 seven weeks I too am proud to be part of this trial and
21 on behalf of Mr. Robinson and myself, no matter what the
22 outcome of this case is, we thank you for his day in
23 court.

24 Now, as other lawyers have stated and other
25 lawyers will state tomorrow and possibly the day after

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your function, your duty, is a difficult one, because
not only must you decide what evidence to believe, what
testimony to believe, but you must decide different separate
verdicts. You must decide 17 or 16 different
verdicts. And even though the charge here is conspiracy,
a separate finding must be made for each defendant.

Now, the seven weeks you have sat here
you have heard witnesses testify on direct, you have
heard witnesses cross examined, exhibits were passed amongst
you. Judge Duffy instructed you on several occasions
not to discuss the case amongst yourselves, not to discuss
it with anybody, but to keep an open mind, and at some
future time, when summations are concluded by both sides,
after Judge Duffy has instructed you as to what the law
is in this case, then and only then are you to
discuss the case amongst yourselves. But as human
beings sitting here listening to the evidence, looking
at the exhibits, I am sure everybody has formulated
some sort of opinion as to what he or she will do in
the jury room, and it is one of the functions of summation
by attorneys to try and put forth to the jurors
certain arguments that the attorneys would like the
jurors to think about in the jury room, because as jurors

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2 in taking the oath you have sworn to listen to the evi-
3 dence and when the case goes to you for deliberation that
4 you will do just that, you will discuss your viewpoints
5 with the other jurors and you will ask the jurors,
6 your fellow jurors, why do they feel this way, and they
7 in turn will ask you why do you feel that way, and
8 you will have to give reasons. Now, you may accept
9 all of the suggestions that I make, you may reject all
10 of the suggestions, you may have your own suggestions.

11 One of the other attorneys mentioned that in
12 some countries you don't have a jury trial. Well,
13 that's true. In some countries there is immediate execu-
14 tion. Other countries, they have presumption of guilt
15 and you have to prove yourself innocent. Fortunately,
16 here in America we do not have this.

17 What is this trial all about? It is to
18 uphold the principle of justice for all. This country
19 has fought many battles to preserve that principle. Many
20 Americans have given their lives. That is why a
21 trial like this, a real live trial, is so important.

22 Now, this trial is not only important to
23 uphold the principle of justice for all, but this trial
24 is important to the prosecution. They put in a
25 great deal of time. But equally this trial is im-

jha5

portant to Warren Robinson, because the outcome of this trial could affect Warren Robinson the rest of his life.

Now, you sat here. You know what this trial is about. The prosecution claims that a conspiracy to sell, possess and distribute narcotic drugs, mainly heroin, some cocaine, existed.

The government further contends that Warren Robinson was a part of this conspiracy, that he wilfully joined this conspiracy and that he wilfully committed acts in furtherance of this conspiracy. This is the charge. I don't think any of us have any doubts as to that.

Now, Warren Robinson has pled not guilty to this indictment, and he is only charged in one count, the conspiracy count. So that by his plea of not guilty he has stated to you that he never knew of the conspiracy, never belonged to the conspiracy, never possessed narcotics and never did anything in furtherance of this conspiracy.

Now, the task is yours. Approximately 30 witnesses have testified. You have probably seen over 100 ex-hibits. Each and every one of you will have to make an individual decision what testimony

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2 do you believe, because as a juror you have sworn
3 not to go into that jury room and say, "Look, I don't
4 want to discuss this case, I have my ideas, I have my
5 feelings, and this is the way I vote," because Judge
6 Duffy is going to give you certain rules of law that
7 each and every one of you have sworn to uphold.
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Now, these laws don't exist just for Mr. Warren Robinson. These laws exist for every American. They would exist for you or I if we found ourselves in the unfortunate position of being accused of a crime.

And as other attorneys have stated to you and Judge Duffy will tell you, there is no secret formula to give you to make your decision. The only formula is use your God-given common sense, use the common sense that you utilize in making your everyday important decisions, because the decision that you made in this case as far as Warren Robinson is concerned will be and is an important one.

Now, some of you have not sat as jurors before and this has probably been an experience you will never forget. For those that have sat on juries before, I am sure this is the first time you have been sequestered as a jury, and this is probably an experience you will never forget. So when the case is given to you and you have a chance to deliberate give this case as much consideration as each and every one of you would want from a juror if you found yourself in the unfortunate position of Warren Robinson.

Now, one of the rules Judge Duffy will mention to you is the presumption of innocence. I know other counsel have gone into it and I am going to touch on it.

1 briefly, because as tired as you are, that's how tired I
2 am. It's been a long day. We are going to be here
3 tomorrow, the day after, probably the day after that.
4 So you will know more law than anybody. But I have a duty
5 to Warren Robinson and I must fulfill that duty. So please
6 bear with me.
7

8 The presumption of innocence doesn't say that
9 an accused person is innocent. It says he is presumed
10 innocent. So an accused person in America starts off ahead
11 of the game, so to speak. He is presumed innocent and
12 the only way he can be convicted is if the prosecution
13 overcomes the presumption.

14 How does the government, how does the prosecution
15 try to overcome the presumption? Well, there is another
16 rule that guilt must be proven beyond a reasonable doubt.
17 That means just what it says. Before the presumption of
18 innocence falls each and every one of you have to be
19 convinced that there is no doubt upon which you can base
20 a reason as to the guilt of the defendant Warren Robinson,
21 and if you have no doubt upon which you can base a reason,
22 well, then your verdict will be guilty. But if you have a
23 doubt or if you have many doubts upon which you can base
24 a reason then your verdict will be not guilty.

25 Now, the presumption of innocence is not just

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2 for the defendants in this case, but for any accused person,
3 anybody accused of a crime in the United States. As I
4 stated before, in some countries there is a presumption,
5 but it's a presumption of guilt, and the burden is cast
6 upon you to come into court and prove yourself innocent.
7 We don't have that here.

8
9 Now, what was the testimony in this case against
10 Warren Robinson? I believe four witnesses testified,
11 four witnesses mentioned Warren Robinson's name. Out of the
12 four three of these witnesses stated that they met Warren
13 Robinson and they testified as to certain transactions that
14 transpired.

15 But who are these three witnesses? Now, counsel
16 before me have called them every name in the book. Counsel
17 after me will probably continue to call them every name
18 in the book. What bothers me is that sometimes when a man
19 is down and he is being kicked continually people start to
20 go to his aid.

21 I am going to ask each and every one of you that
22 possibly outside of the courtroom maybe that is the right
23 thing to do, but inside the courtroom, where accused persons
24 are accused of serious crimes, their entire lives can be
25 affected, I say to you that a witness who has come into
this court and has lied deliberately cannot be kicked

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2 enough.

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3 Now, other than the three witnesses --and we will
4 mention the three witnesses -- what other evidence is there
5 to connect Warren Robinson to this conspiracy? Is there
6 any documentary evidence? Has one piece of paper been
7 passed amongst you? I submit there has not. Has there
8 been testimony from any untainted source, has there been
9 any testimony that we could believe?

10 Now, the first witness who testified and
11 implicated Warren Robinson as a drug dealer was Harry
12 Pannirello. We all know what Harry Pannirello did. We
13 all know that he sold drugs for a long period of time.
14 And I ask you and I urge you, when you consider his testi-
15 mony, when you decide whether or not you are going to believe
16 his testimony or disbelieve it, consider one factor:
17 did Harry Pannirello have a reason to lie? Does he have
18 a motive to lie? Is there any reason why he should come
19 into a courtroom in the United States, swear to tell the
20 truth before a jury and a judge, and lie to you? Well,
21 if you find that there is a reason then consider that
22 reason.

23 I am not going to go into every promise, I am
24 not going to read the transcript to you, because I feel that
25 each and every one of you know as much about the testimony

1 as I do. I am sure each and every one of you could probably
2 could quote verbatim the conversations that were asked of
3 these witnesses and I am sure each and every one of you
4 know the answers they gave. But if during your deliberations
5 there is any doubt as to what these conversations were you
6 have the right to ask the marshal to ask the Judge if you
7 could have testimony read back.
8

9 Now, Harry Pannirello involved almost his entire
10 family in the drug business. He brought in his brother,
11 John Pannirello, who we did not see in court. He brought
12 in his brother-in-law, Jimmy Provitera. He kept drugs
13 at his mother-in-law's house. He kept money in his father-
14 in-law's safe-deposit box. He involved everybody.
15 Fortunately for them, they were not arrested.

16 But would a person like this hesitate one moment
17 to come into a court and lie straight-faced to each and
18 every one of you to save his soul? Think about that.
19 I am sure there is not a person here that would loan this
20 man a dime. I am sure there is not a person on this jury
21 that would bet their money on advice of Harry Pannirello.
22 Now, if you cannot trust a man I submit you cannot take
23 his word as to what he says happened between himself and
24 Warren Robinson.
25

Now, what testimony did he give? You remember he

1 testified to several meetings. I am not going to go into
2 detail, but I just would like to say look at his testimony.
3 On direct examination when he was questioned by the
4 prosecutor he gave answers immediately. He knew just
5 what to say. Did he hesitate, did he think? Or was he
6 testifying as if this was a prepared script?
7

8 And what happened on cross-examination? How
9 many times did he say, "I don't remember, I don't recall"?
10 How many times did he say, "I was confused, I am confused
11 today"? How many times did he say that?
12

13 Can you convict somebody beyond a reasonable
14 doubt on testimony of a person who sits on that witness
15 chair and says to you, "I am confused, I don't remember"?
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2 Remember, when I cross-examined him and other
3 counsel cross-examined him, he said it was the first time
4 he ever spoke to us. He didn't know what questions were
5 going to be asked, so he didn't have answers on his finger-
6 tips, so don't think for one moment because he answered
7 spontaneously to the prosecutor's questions that he was
8 telling the truth, because if he was telling the truth he
9 would answer with equal spontaneity the questions by defense
10 counsel. And I submit, and it is your recollection that
11 counts, that he did not.

12 How consistent was he? Besides saying "I don't
13 know" maybe ten or twenty times or "I don't remember" how
14 consistent was he? I am only going to dwell on three
15 inconsistencies.

16 He testified that at one time he sold drugs that
17 smelled from vinegar. When asked, "When did you sell
18 these drugs with the vinegar odor," he testified on trial
19 in front of you, oh, he sold those in March. He had no
20 problem remembering when the government asked him, "When
21 did you sell these vinegar or these smelly drugs?" He said
22 right away March, no doubt about it, quickly.

23 On cross-examination he was asked, "Well, do
24 you remember when you sold those smelly drugs?"

25 He says, "Well, I think I said March."

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2 Then he was asked, "Did you ever tell anybody
3 any other date?"

4 "I don't remember.

5 "Well, did you ever tell any of the agents a
6 different date?

7 "I don't remember."

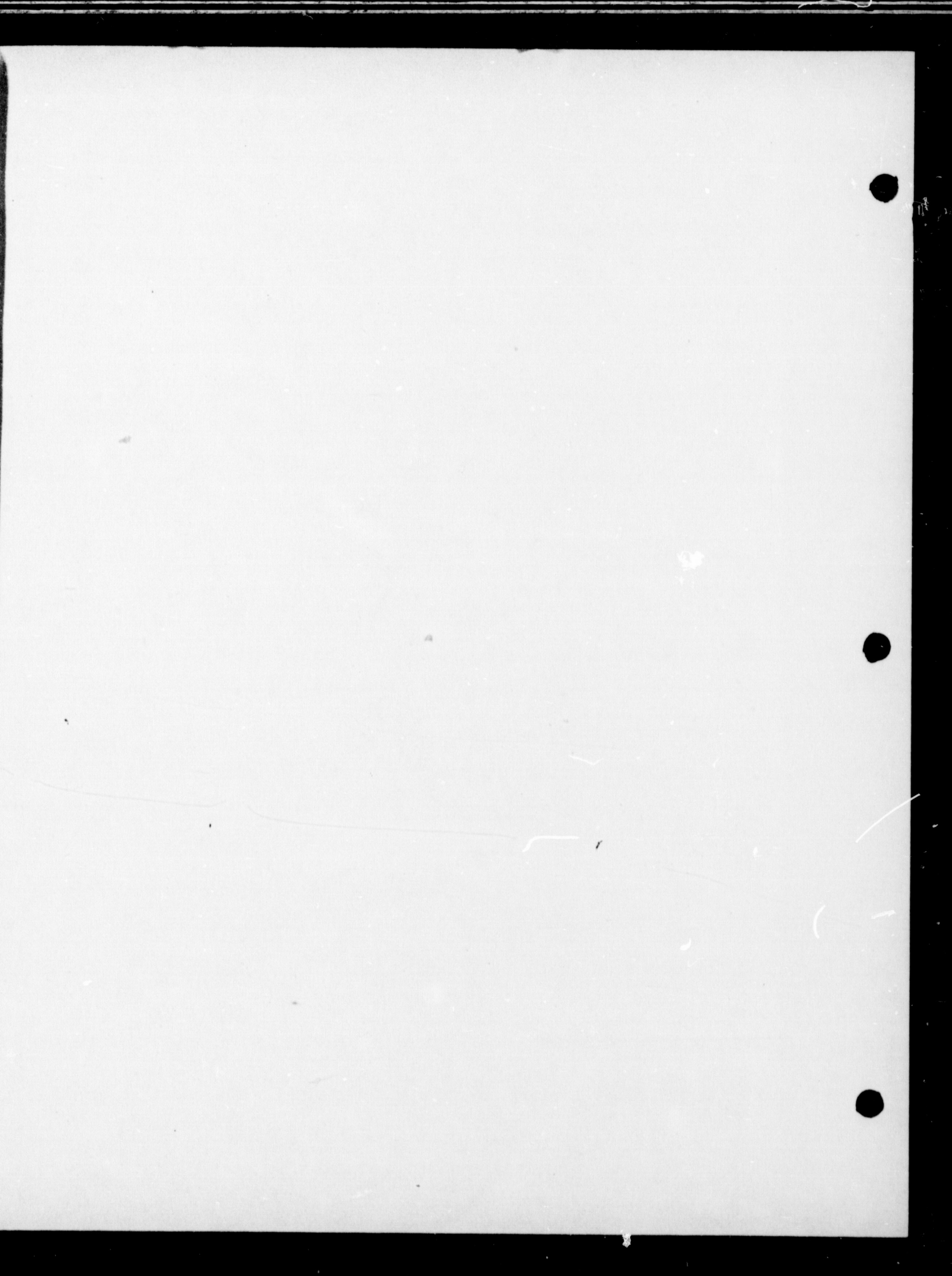
8 Then his recollection had to be refreshed.
9 We had to show him the notes from the tape recording.
10 And what did he say to the agents on that tape recording?
11 He sold the drugs in January.

12 He testified as to a dry spell, a period when he
13 couldn't get narcotics, and he was sure about that because
14 he wasn't making money, there wasn't any business and he
15 remembers those dates.

16 He took the witness stand and swore, and what
17 did he tell you in open court as to the date of the dry
18 spell? He told you June to September.

19 Now, he gave a quick answer to the prosecution,
20 June to September was the dry spell. As a matter of fact,
21 he packed his bags, went to Florida, went to Canada, there
22 is no drugs around, he said, "What the heck shall I stay
23 in New York for, let me go down to sunny Florida, can't make
24 any money here."

25 On cross-examination when pressed about the same



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point, what does he say? "I don't remember. Maybe I told somebody something else. I don't remember. I have no recollection."

And again he was shown the statement. What did he tell the agents? He says the dry period was January or February to June, not June to September.

Now, does this in and of itself make a man a liar? I submit maybe not. But then you consider his motive to lie. What does he have to gain by coming in here and saying, "I saw Warren Robinson in Howard Johnson's"? What has he to gain? He has to gain his life, his freedom. He stays in the street. He made a deal. He would put anybody in who he could think of.

You may say to yourselves, "Well, how did he pick on Warren Robinson out of all the millions of people in the United States of America?" Okay.

Remember he was asked, "Were you ever shown a picture of Warren Robinson?"

He says, "Yeah, I was shown a picture by Agent Nolan."

He was asked, "Is this Allen?"

And he said, "Oh, sure, that's Allen."

Now, is that so difficult? This is how he knew who Warren Robinson was. He admitted it right here

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2 in court he saw a picture of Warren Robinson.

3 It is unique, there was never any testimony
4 of being shown a picture of Henry Salley. There is no
5 testimony about being shown a picture of Henry Salley.

6 And what happened in court when the prosecution said to
7 him, "Do you see Henry Salley in court?"

8 Your recollection is as good as mine. You know
9 where the witness was sitting, you know where Henry Salley
10 was sitting. This is the same person who he said he saw
11 with Warren Robinson at the Howard Johnson's Motel on two
12 or three occasions.

13 What did he say? He looked around, he looked
14 around and he said, "I don't see him."

15 Why didn't he see him? Why didn't he pick him
16 out? Because he never saw him. And not only did he
17 never see Henry Salley, but he never saw a picture of Henry
18 salley, so he could not make an identification. On Warren
19 Robinson it was easy, he was shown a picture.

20 Do you remember Harry said his nickname was
21 Harry the Horse and he tried to push it away lightly.
22 He says, "Oh, that hasn't been used in years."

23 That's what he tried to tell you. But when
24 pressed on cross-examination, what did he tell you horse
25 meant in street vernacular? He told you it meant

1 tp5

2 heroin. And how did he know? Because Harry the Horse he
3 knew stood for Harry the heroin connection.

4 Are you going to believe a man's testimony,
5 a man who has been dealing in drugs for years? Are you
6 going to take his word for it? I submit you would say
7 to yourselves, "I'm not going to believe that. Show me
8 some untainted, uninterested testimony." You are not
9 going to find any in this case.

10 What does the prosecution do next? They bring
11 on Jimmy Provitera.

12 Now, who is Jimmy Provitera? We all know he is
13 the brother-in-law of Harry Pannirello?

14 You remember Jimmy said and Harry said that after
15 they were arrested they all went to a lawyer, they all had
16 the same lawyer. Very convenient. And the lawyer told
17 them, "Hey, you better cooperate, you'll never see daylight
18 again."

19 So what does the lawyer do? Does he take them
20 by the hand, take them down to the Bureau of Dangerous
21 Drugs or now the Drug Enforcement Administration and say,
22 "Here are my clients, they told me the story, this is what
23 they told me, they are guilty, they want to sit down and
24 cooperate"?

25 The lawyer doesn't do that. The lawyer says,

1 tp6

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2 "Ha, you go down yourself."

3 Why does he do that? I'll tell you why.

4 Because he knew they were going to tell the government a
5 bunch of lies. He knew that they were going to tell the
6 government a story that the lawyer didn't hear, but a
7 different story.

8 The lawyer wasn't going to put himself in this
9 position. The lawyer says, "You go make your own deal and
10 whatever deal you make I will be there on the date of
11 sentence. Don't involve me in your dirty lies, don't involve
12 me in your dirty business."

13 What do they do? They discuss cooperating.
14 They say they will go to the agents, five, six, fifteen,
15 twenty times, and finally Harry Pannirello said after the
16 fifth -- I withdraw that. Jimmy Provitera says after
17 the fifth or sixth time after he spoke to the agents they
18 finally recorded his story. Why didn't they record his
19 story the first time, the second time, the third time,
20 the fourth time? Because it wasn't good enough, it didn't
21 put enough people in, it didn't make up enough lies.

22 Maybe they didn't have the picture of Warren Robinson to
23 show him. But eventually, the statement was recorded.

24 Jimmy Provitera, I am not going to mention --
25 it would take too much time to discuss Jimmy Provitera

1
2 because, again, you know all the testimony. You can have
3 it read. He did the same thing. He said he told the
4 story to the agents five, six times, told his story to the
5 prosecution after it was recorded by the agents.
6

7 I don't blame Mr. Curran, Mr. Phillips, Mr.
8 Engel or Mr. Fortuin for putting on these witnesses.
9 Mr. Curran's office has a job to perform, just like the
10 attorneys in this case. The agents give him a case, he
11 has to prosecute it. He can't say, "Get out of here with
12 that case." He has to prosecute it. He does the best he
13 can with what he has.

14 So when these witnesses come into this office
15 and they have a story, not the truth but a story -- and how
16 many times did Jimmy Provitera say, "I told my story to the
17 agents" -- and they came in with this story to Mr. Curran,
18 he had to use the story.

19 None of the prosecutors in this case were ever
20 at any of the places testified. Defense counsel weren't
21 there. The Judge wasn't there. None of you were there.
22 We only have the word of these witnesses.

23 One important point I think was made on cross-
24 examination was when Jimmy Provitera was asked on direct
25 about meeting Warren Robinson, the person who he called
Allen, he gave a detailed statment as to what he said

1 tp8

2 happened that day. He said Salley came up to his car, he
3 said Warren Robinson is going to be late, they went into
4 a motel room, he gave you detail after detail on direct
5 examination.

6 What happened on cross-examination? He was
7 asked, "Did you ever tell any other story to somebody
8 else?

9 "I don't remember."

10 The same nonsense that his brother-in-law gave.

11 Then what was shown to him? His own statement
12 wherein the agents said -- and it is all in the trial record,
13 you can look at the minutes, I believe it is page 3221 --
14 when asked, "Did you ever tell any of the agents you have
15 no recollection of what happened in November of 1972 when
16 you said you met somebody at Howard Johnson's," he said,
17 "I don't remember if I told any agent."

18 Then he was shown his statement and he was asked,
19 "Does this statement refresh your recollection?"

20 And he answered, "Yes, it does."

21 He was almost in tears up there.

22 And I said, "Well, what does it say?"

23 He said, "When they asked me about Howard
24 Johnson's, I told them I don't recall."

25 If he was telling the truth, would he be con-

1 tp9

2 sistant? Would he be close? Maybe a red tie instead of
3 a blue tie, but he would be close. But a total statement
4 of "I don't recall" to the agents six months before he took
5 the witness stand here, after he was cooperating. I mean,
6 can you believe that? Did he make it up as he went along?
7 Are you going to say that you are going to convict somebody
8 beyond a reasonable doubt on this man's testimony?
9

10 The last point or the next to the last point
11 about Jimmy Provitera, you remember Harry Pannirello said
12 he called Allen, a person he saw a picture of and later
13 who he identified as Warren Robinson, he called him several
14 times, he had telephone numbers at home and he had other
15 numbers, and he said Warren Robinson called him back, and
16 then Harry said when he went away for the summer he left
17 instructions for Jimmy, you know, "Call him, make the
18 meetings or whatever you have to do, call him and see what
19 you have to do."

20 Let me say this. Let me suggest this to you.
21 If, in fact, Harry Pannirello had these numbers and dealt
22 with Warren Robinson and made these phone calls and Jimmy
23 Provitera made these phone calls, don't you think the
24 prosecution would offer in evidence telephone company
25 records of these calls? Where is it?

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2 With these records, if they ever existed, wouldn't
3 that be enough for each and every one of you to say, "Hey,
4 we have Warren Robinson cold, Provitera is not lying,
5 Pannirello is not lying, look here, the records from
6 Ma Bell, someone who has no axe to grind, have these tele-
7 phone numbers, Pannirello's number, Warren Robinson's
8 number."

9 Well, the government may say, "Hey, look, when
10 Pannirello called Robinson he called from a pay phone and
11 he probably left a number for Robinson to call."

12 Well, you can pull the toll call from Robinson's
13 home, his office, his place of business, and see if there
14 are any New Jersey numbers, New York numbers. The phone
15 company can tell you the location of any place or any of
16 these phone booths or any area where Provitera dealt or
17 hung out. There is no testimony of any telephone records.

18 I submit, and I think Judge Duffy will tell you
19 in his charge, that not only can you decide this case on
20 the evidence and the testimony that you heard, but you can
21 also decide this case on the lack of evidence, evidence
22 that should be here but is not here.

23 The last point about Jimmy Provitera. He
24 testified on direct examination, "Do you see this person
25 Warren Robinson here?"

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2 "Yes, I do.

3 "The person who you call Allen?"

4 Who does he point out? He points out Warren
5 Robinson. He, too, was shown a picture.

6 What happens later on? "Do you see another
7 defendant here named Butch Ware or William Alonzo?"

8 He says, "Sure, I see him," and who does he point
9 to? He points out Warren Robinson. I mean, you all remember
10 that. It was clear.

11 Now, right here in court in front of you Jimmy
12 Provitera identified Warren Robinson as William Alonzo,
13 Butch Ware. I mean, is this the type of identification
14 that you are going to say a man is guilty of selling drugs?
15 I mean, are you going to buy these lies?

16 I mean, the government, in their summation,
17 the prosecution is going to say, "Hey, Mr. Leighton was
18 waving smokescreens, he threw in Ma Bell, he threw in
19 identification, he threw in inconsistencies, they are red
20 herrings, it is to take your eye off the ball."

21 But what else is there? I mean, I didn't make all
22 these up. The inconsistencies, the misidentification,
23 motive to lie, reason to lie is right in the record and
24 it will be there forever.

25 The irony about this case is that Harry Panni-

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2 rallo, Johnny Pannirello, Jimmy Provitera, Thomas Dawson,
3 four men, four men caught redhanded, caught with drugs in
4 their hands or caught making deals with federal agents,
5 caught transferring drugs to agents - where are they?

6 Do you see one of those persons in this court? Do you
7 think for one moment any one of those four are going to
8 spend a day in jail? I mean, what is the irony? Look
9 at the irony of this whole thing.

10 They blamed everything that they did on people
11 they didn't like and if there weren't enough people they
12 put in people whose names they knew. I am going to give
13 you a perfect illustration of how this happened, because
14 after Jimmy Provitera, the last witness called to say any-
15 thing about Warren Robinson, was old Thomas Tennessee Dawson.

16 You remember Tommy, Thomas Tennessee Dawson,
17 three-time loser, three burglaries, pled guilty three times,
18 but swore he said he didn't make any deal here. Well, each
19 time he pled guilty to burglary in Washington, he never
20 received a maximum sentence, his lawyers made a deal.
21 What happened? He went to jail, the first time a year
22 and a half, the second time six years, the third time 12
23 years.

24 What kind of deal did he make for himself?
25 The man is almost 50 years of age. He has pled guilty to

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2 one count.

3 Well, the last time he went to jail he received
4 12 years. What is he going to get this time? If he
5 gets 20 years, he'll never see daylight again, so he says
6 to himself, "Old Tennessee, baby, we are going to make a
7 deal. We are going to make a deal to beat all deals.
8 We are going to give up everybody. We will say anything
9 about anybody."

10 And that's just what he does. He tells you he
11 doesn't expect to be prosecuted for income tax evasion,
12 doesn't expect to be prosecuted for a life count, violation
13 of federal law, because he said he admitted he had five
14 people out there dealing for him. He supervised five
15 people. He could be indicted and go to jail for life if
16 convicted of federal laws, but he says he doesn't expect
17 to be prosecuted for that.

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18 He doesn't do a day in jail. He made some deal.
19 The man has a license to steal, the man has a license to
20 sell drugs if he pulls the wool over your eyes, because
21 you remember one thing, Pannirello, Provitera and Dawson
22 await sentence and if your verdict says that they are liars,
23 you know they are not going to walk that street, they will
24 get what they deserve.

25 What did Dawson do back in November of 1971?

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2 Agent Logan, he went to him and he said, "Hey, look, you
3 are dealing in drugs. You watch it. You will get
4 arrested."

5 What does he do? He decides to cooperate and
6 he gives up, he testified, he said he gave up many, many
7 names. He mentioned Freddy, Moochie. And whose name
8 does he also throw in the pot? Warren Robinson.

9 Did he say to Agent Logan, "I'll give you Allen's
10 name"? He said no, he gave the name of Warren Robinson.

11 How does he know Warren Robinson?

12 Dawson testified he put an air conditioner in
13 Robinson's store, he used to buy clothes in the store and
14 he knew Robinson since '69 or '70, since this store first
15 opened.

16 Now, 1971, November, Tennessee Dawson says to
17 Special Agent Logan, "Warren Robinson is dealing drugs."

18 Warren Robinson, was he ever arrested in
19 Washington, D.C. or Baltimore for dealing in drugs? No
20 testimony. Never arrested.

21 Agent Logan himself testified after he spoke to
22 Tennessee Dawson, and he said he spoke to Tennessee at
23 least fifty times, he even went to Warren Robinson's store.
24 What do you think he went to that store for, to buy some
25 shirts and ties and pants and suits? He went to that

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store to see if Warren Robinson was selling narcotics.
And for over a year and a half he said he observed Warren
Robinson and never, never one arrest.

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2 You ever hear any testimony about seeing
3 Warren Robinson dealing with known drug addicts? Any
4 testimony of drug dealers going into Warren Robinson's
5 store? Any testimony of Warren Robinson driving a
6 fancy car, fancy clothes, nightclubs? Nothing.

7 The agent had this information for a year and
8 a half and nothing happened, until Warren Robinson
9 was thrown into this case back in November of 1973.

10 And why was he thrown into this case? Because Tennessee
11 Dawson just before the arrest says to Agent Logan, "By the
12 way, I forgot to tell you back in 1971 Warren Robinson
13 is Allen, you know, the dude I been dealing with in
14 Jersey."

15 Well, Allen could be anybody. It could be
16 you, it could be people in the audience, it could be
17 anybody. Not Warren Robinson.

18 So now there is an arrest of Warren Robinson
19 because Tennessee says, "Hey, Warren Robinson is Allen.
20 Take his picture."

21 They showed his picture to Harry Pannirello,
22 Jimmy Provitera. "Hey, this is Allen." Harry
23 Pannirello says, "Sure, that's Allen. Jimmy Provitera
24 came into court and identified Warren Robinson as being
25 somebody else.

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What kind of a case does the government have against Warren Robinson? Are you going to sit there and convict a man on that type of evidence?

Now, you have a difficult job. There are 17 defendants. You have to make 17 different decisions. Each counsel is going to stand up here before you. I am No. 5 and there will be 11 or 12 others to follow me. It is not an enviable task that you have to sit there and listen, because everything hopefully that you hear you already know. You remember all the testimony. We have a job. I have a job to represent Warren Robinson and I have to do it. I am sure each and every one of you understands that.

Now, Tennessee Dawson tells Agent Logan, "Warren Robinson is dealing drugs."

Agent Logan is employed by the then Bureau of Narcotics and Dangerous Drugs, probably one of the largest law enforcement or drug law enforcement agencies in the world, untold facilities at its hand, untold manpower, all electronic devices. Anything they need the United States Government can get. Do you think for one moment if Warren Robinson was dealing in drugs he would not have been arrested for a year and a half?

Remember, Tennessee tells you that he brought

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2 Warren Robinson to New Jersey to meet Harry Pannirello.

3 Well, if he was cooperating and he had already given
4 Warren Robinson's name how come Agent Logan goes to Warren
5 Robinson's store, speaks to him -- he said he observed him
6 on the word of Tennessee Dawson. What did Agent Logan
7 say to the question, "Did you ever see Warren Robinson
8 in the State of New Jersey"?
9

10 "No."

11 "Did you ever see Warren Robinson in the
12 State of New York meeting Harry Pannirello?"

13 Answer, "No."

14 And why didn't he see him? "Because Warren
15 Robinson was never in New York or New Jersey with Harry
16 Pannirello dealing in drugs, Tennessee Dawson dealing in
17 drugs or Jimmy Provitera or Johnny Pannirello dealing in
18 drugs."

19 If you remember anything about what I said today
20 I ask you to consider that very important fact, that
21 Tennessee Dawson gave Warren Robinson's name to Agent
22 Logan in November, 1971. Warren Robinson had a cloth-
23 ing store. There is no testimony that he was doing
24 anything from Agent Logan.

25 Tennessee Dawson tried to lie a little.
He said, "Oh, I only met Agent Logan maybe five, six

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2 times." Then we pressed him a little, because Agent Logan
3 testified first. I said, "Well, how about 10?"

4 He said, "No, it could not have been that
5 mjch."

6 What did Agent Logan say? "I met him at least
7 50, maybe 100 times."

8 What was he meeting him for? To get in-
9 formation.

10 What good was that information against
11 Warren Robinson? No arrest, no case by Agent Logan, no
12 observations of Warren Robinson doing anything illegal or
13 even suspicious in Washington, D.C.

14 Now, Tennessee Dawson spent a lot of time in
15 jail. He received a tremendous education in jail.
16 Look what he did. He testified he was the first one
17 to make a conditional release in the District of Columbia.
18 "You know, I was a model prisoner," he wants you to believe,
19 "I didn't even have to report to parole, and the only
20 time I had to report to parole was if something serious
21 happened, like a change of address, an arrest, if I
22 did something illegal, like dealing in drugs."

23 He was pressed. "Did you deal in drugs
24 while you were on parole?"

25 "Sure."

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2 "Did you tell the parole officer?"

3 "No." And he was cut loose from
4 conditional release.

5 What does that prove, what does that show?
6 He fooled his parole officer. Are you going to give him
7 a medal for that? Are you going to say, "Well, boy,
8 if he can fool his parole officer he must be telling the
9 truth here"?

10 What does he do after that? November,
11 1971 he decides, as he testified, to become a cooperat-
12 ing individual, and he is cooperating with Agent Logan.
13 What does he do while he cooperates with Agent Logan?
14 Does he show any remorse? Is he afraid to go to
15 jail again? Is he afraid of getting caught and becoming
16 a four-time loser? He is brazen. He couldn't care
17 less, because he knows he will make a better deal if he
18 gets caught.

19 So while he is cooperating, as he testified,
20 with Agent Logan, and we don't hear of any arrest that
21 Agent Logan ever made on information given by Tennessee
22 Dawson back in '71 or '72, the only arrest we heard was
23 the Pannirello boys and Provitera, February and
24 January of '73, but what does Tennessee do while he
25 says he is cooperating with Agent Logan? He is selling

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2 drugs behind his back.

3 Not only is he selling drugs behind Agent
4 Logan's back, but he is also involving other poeple in
5 drugs. You remember I asked him about his daughter.
6 He said, "My daughter is not selling drugs."

7 I said, "Wait a second. Doesn't your
8 daughter live with one of the twins, Ronald or Donald?"

9 He was shocked. He said, "Well, yes."

10 I said, "Isn't Donald one of your buyers of
11 drugs?"

12 And he said, "Okay, yes."

13 He was afraid that maybe Agent Logan gave us
14 some information that Tennessee wasn't aware of.

15 So the very person who is living with his
16 daughter, Tennessee Dawson is selling drugs to that person,
17 while he is supposed to be cooperating.

18 And that's not all. He testifies about a
19 girl friend of his, Bernell. He says he is at her
20 house with a lot of young children around. What happens?
21 Again, the police break in, make an arrest. Not for loli-
22 pops, but for cocaine. Whose cocaine was it, the
23 little children's? You know better.

24 What happened to that case? Well, you know.
25 Just like Tennessee thinks this case will be, he walked,

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2 dismissed.

3 So what was he doing to Agent Logan all of
4 that time? The same thing he did to the parole
5 officer -- fooled him.

6 Don't you think for one minute when Tennessee
7 Dawson came into this courtroom, stood on that platform
8 and raised his hand, you don't think for one moment that
9 he was thinking, sizing up Judge Duffy, sizing up the jury,
10 saying to himself, "Man, I gave it to the parole officer,
11 I gave it to old Agent Logan, I am going to give it to
12 this jury." Don't think for one minute that
13 wasn't going through his head.

14 And what did he try to do? He tried to
15 slip it to you. He told his story.

16 Now, those are the three witnesses,
17 Pannirello, Provitera and Dawson. You have to make
18 a decision. Did those three give you testimony that
19 you can honestly say you don't have a reasonable doubt or
20 even many reasonable doubts? Or are you going to say
21 this man contaminated this courtroom, he came in
22 here and told lies to save his soul, and we are not going
23 to believe a word of it.

24 I don't think any one of you here sitting in
25 this jury would want your future to hinge on the truth and

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2 honesty of Pannirello, Provitera and Dawson.

3 Again I say if you think I am raising a smoke-
4 screen, if you think I am trying to pull the wool
5 over your eyes, discuss the case, have the minutes read
6 back challenge what I just said to you. But you
7 will find every bit of it in the trial record.

8 Again, just to summarize before I close,
9 Tennessee Dawson gave Warren Robinson's name. No arrest.
10 Harry Pannirello was shown a picture of Warren Robinson.
11 He is told "That's Allen." He says, "Okay, that's
12 Allen."

13 Jimmy Provitera comes into court, looks at
14 Warren Robinson and says, "That's William Alonzo."

15 Harry Pannirelly says, "I saw Warren Robinson,
16 the fellow named Allen, and a fellow named Salley at
17 Howard Johnson's several times." He comes in here,
18 he doesn't see Salley.

19 You could go on for days with the incon-
20 sistencies or reasons to lie. I am sure each and every
21 one of you can call out 10 or 15 other inconsistencies.

22 Warren Robinson was convenient for Tennessee
23 Dawson. It could have been you or I if we were friendly
24 with Tennessee Dawson, because if we are innocent, we
25 didn't do anything, the same thing would happen to us as

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2 happened to Warren Robinson in Washington, no arrest,
3 because the man wasn't doing anything.

4 Tennessee would have you believe he was dealing
5 in drugs. But nothing happened, no testimony that
6 anything suspicious was going on, except from the mouth
7 of Tennessee Dawson and then Harry Pannirello and Jimmy
8 Provitera.

9 You wouldn't bet your life's savings on their
10 testimony. You wouldn't buy a car from them. You
11 wouldn't take their word about anything. I submit
12 you cannot convict Warren Robinson on their testimony
13 because without their testimony there is no other --
14 no other -- testimony or evidence to link Warren Robinson
15 to this case. There is no testimony from Agent Lo-
16 gan when he walked into Warren Robinson's store that he
17 called him Allen. That is a name that Tennessee Dawson
18 was probably dealing with for years. It is a person
19 that Harry Pannirello and Jimmy Provitera were dealing with
20 for years. But for convenience' sake, because a picture
21 was shown to them, they said Warren Robinson.

22 Again I say to you I don't say the prosecu-
23 tion knew about this. They were not there in 1971.
24 They were not involved in that case in 1971. They
25 weren't involved in this case until some time in late

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2 '73, after the arrest, and they were given the case,
3 the case was already made by the likes of Provitera,
4 Pannirello and Dawson. So you can't blame the
5 prosecutor.

6 Now, in closing I would just like again to
7 thank each and every one of you. It's been a long
8 day. You have all listened attentively. Youi
9 have given Mr. Robinson his day in court.

10 I ask you, please, don't consider this a
11 contest between the prosecutor's office and myself.
12 I have a job to do. Hopefully I will have other
13 cases. The government, the prosecutor, we know will
14 have other cases.

15 This is not a television trial. It is a
16 real trial. You are dealing with the lives of real
17 people, not actors. The outcome could affect the de-
18 fendant Warren Robinson the rest of his life.

19 As you sit there you probably observed members
20 of the government writing notes. They have a per-
21 fect right to do that, because they got the last chance
22 to speak to you. When I am finished here I do not
23 get another chance. Whatever remarks the prosecution
24 may say to you, you may see my face turn red, you may see
25 my beard turn completely white, but I can't say anything,

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I have to sit there.

I ask each and every one of you that if the prosecution raises arguments and you think about then you also have a right to say to yourself, "Let me think of those arguments that I can think of or let me think of those arguments that Leighton might have raised." You can do that and I ask you to do that.

Now, reasonable doubt. I won't take the time because that is Judge Duffy's province. Nobody can tell Judge Duffy what the law is because he is supreme on the law. Each and every one of you swore under oath to follow the law as judge Duffy gives it to you. But as Judge Duffy is supreme on the law, you and each and every one of you are supreme judges of the facts. I can't tell you what the facts are. No other counsel can tell you. The judge cannot tell you what the facts are. You decide what the credible, believable, truthful facts are in this case.

Reasonable doubt is just what it says. It is a doubt upon which you have a reason. It could be many doubts for many reasons. But it only takes one doubt.

You can consider not only the testimony you

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heard in court, the exhibits that were passed around, but ask yourself could there be better evidence, is there a lack of credible evidence, is there a lack of independent, uninterested evidence, something that I could consciously believe in, something other than Provitera, Pannirello and Dawson.

Finally, I ask you not to try Warren Robinson because you have a dislike for narcotics. Nobody in this court building likes narcotics. But narcotics in and of itself is not on trial.

I am confident that you will give Warren Robinson the same consideration that each of you would expect from a jury if you would find yourself in the unfortunate position of Warren Robinson, that is, an accused person of a crime. Would you convict on the testimony of Pannirelly, Dawson or Provitera?

Search your conscience and by your verdict show your outrage to such testimony. Bring in a verdict that says Warren Robinson is not guilty.

Thank you.

THE COURT: All right. Be back tomorrow morning, ladies and gentlemen.

(The jury left the courtroom.)

THE COURT: Mr. Dowd starts off tomorrow

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2 followed by Mr. Richman, Mr. Rosenbaum, Mr. Sunden,
3 Mr. Warner and Mr. Rosenberg. I am sure we will cover
4 that many tomorrow. We might go further, but I don't
5 know.

6 All right. See you all here at 10 o'clock
7 tomorrow.

8 (Adjourned to Tuesday, March 5, 1974, at
9 10:00 a.m.)

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